ACT X OF 1872.	BILL.
439 ...	221
440 ...	222
441 ...	223
442 ...	554
443 ...	225
444 ...	227
445 ...	227
446 ...	226
447 ...	228
448 ...	229
449 ...	231
450 ...	230
451[1] ...	232
452 ...	233
453 ...	234
454, paras. 1 to 3	235
454, *Ill.* (*a*) ...	235, *Ill.* (*a*)
(*b*) ...	(*d*)
(*c*) ...	(*e*)
(*d*) ...	(*f*)
(*e*) ...	.....
(*f*) ...	235, *Ill.* (*g*)
(*g*) ...	(*h*)
(*h*) ...	.....
(*i*) ...	.....
(*j*) ...	235, *Ill.* (*i*)
(*k*) ...	.....
(*l*) ...	235, *Ill.* (*j*)
(*m*) ...	(*l*)
(*n*) ...	(*b*)

ACT X OF 1872.	BILL.
454, *Ill.* (*o*) ...	235, *Ill.* (*m*)
(*p*) ...	(*c*)
455 ...	236
456 ...	237
457 ...	238, para. 1
457, *Ill.* (*a*) ...	238, *Ill.* (*a*)
(*b*) ...	.....
458 ...	239
459 ...	240
460, para. 1 ...	403, para. 1
2 ...	2
3 ...	3
4 ...	4
Ill. (*a*) ...	*Ill.* (*a*)
(*b*) ...	(*b*)
(*c*) ...	(*c*)
(*d*) ...	.....
(*e*) ...	403, *Ill.* (*d*)
(*f*) ...	(*e*)
(*g*) ...	(*f*)
(*h*) ...	(*g*)
461, cl. 1	367, para. 2
2 ...	3
462 ...	366
463 ...	367, para. 1
464, para. 1 ...	367, paras. 1, 2 & 4 369
2[2] ...	371, para. 1
3 ...	372
4 ...	367, para. 5, *Proviso.*

[1] See Act XI, 1874, s. 40.

[2] See Act XI, 1874, s. 41.

ACT X OF 1872.	BILL.
464, para. 5 ...	.....
6 ...	537
7[1] ...	537
465	196
466, paras. 1, 2 & 3	197, para. 1
4 ...	2
5[2] ...	4, last para.
467 ...	195, para. 1, cl. (*a*)
468 ...	(*b*)
469 ...	(*c*)
470, para. 1 ...	195, para. 2
2 ...	3
470, *Expln.* ...	.....
471, paras. 1 & 2	476, para. 1
3	2
472, para. 1 ...	477, para. 1
2 ...	.....
3 ...	477, para. 2
473 ...	487, para. 1
474, paras. 1 & 2	478
3	.....
475 ...	479
476 ...	478, para. 2
477 ...	476
478 ...	199
479 ...	199
480 ...	127
481 ...	128
482 ...	129
483 ...	132, cl. (*a*)

ACT X OF 1872.	BILL.
484 ...	130
485 ...	132, cl. (*c*)
486 ...	(*d*)
487 ...	131, and 132, cl. (*b*)
488 ...	132, cl. 1
480 to 488 (Ch. XXXVI)[3]	127 to 132 (Ch. IX)
489, para. 1 ...	106, para. 1. 123, paras. 1 to 3
2 ...	120, para. 1
3 ...	.....
4 ...	.....
490 ...	106, para. 1 123, paras. 1 to 3
491 ...	107
Explns. ...	107, 117
492 ...	112
492, *Expln.* ...	113
493, para. 1, cl. 1	554
2	106, para. 1, last cl., and 118, *Proviso 2nd.*
2 ...	.....
494 ...	90
Proviso ...	108, para. 1 114, *Proviso.*
495 ...	116
496 ...	119
497 ...	118, para. 1 123, para. 1
498, para. 1 ...	107, 123
2 ...	123
499, para. 1 ...	.....
2 ...	.....

[1] See Act XI, 1874, s. 41.
[2] Ditto ditto, s. 42.
[3] See Act XI, 1874, s. 43.

ACT X OF 1872.	BILL.
499, para. 3 ...	123, paras. 1 & 4
Expln. ...	.....
500 ...	124, para. 1, and 125.
501 ...	126
502, para. 1 ...	514, para. 1
2 ...	2
3 ...	3
4 ...	4
5 ...	1
6 ...	121
7 ...	107, 514
503, para. 1 ...	514, para. 1
2 ...	2 & 3
3[1] ...	4
504, para. 1 ...	109
2 ...	120, para. 1
3 ...	.....
4 ...	109
505 ...	110
506 ...	110
507, para. 1 ...	123, para. 2
2 ...	3
508 ...	123, para. 3
509, para. 1 ...	112
2 ...	554
510, para. 1 ...	123, para. 1
2 ...	5
511 ...	124, para. 1
512 ...	2
513 ...	126

ACT X OF 1872.	BILL.
514, para. 1	514, para. 1
2	paras. 2 & 3
3	para. 4
515, para. 1 ...	112, 114
2 ...	109
3 ...	117, para. 2
4 ...	511
516 ...	122
517 ...	111
518, with *Expln.* 1	144, para. 1
518, *Expln.* 2 ...	2
3 ...	3
4 ...	4
519 ...	143
520 ...	435, para. 3
521 ...	133
522 ...	134
523, para. 1 ...	135
2 ...	138, cl. (*a*)
3 ...	139
4 ...	141
5 ...	138, cl. (*c*), and 139
524, para. 1 ...	138, cl. (*b*)
2 ...	.....
525, para. 1 ...	136, & 137, para. 1 140, para. 2.
2 ...	140, para. 3
526, para. 1 ...	139, para. 1 140, para. 1
2 ...	140, para. 3
527[2] ...	137, para. 2

[1] See Act XI, 1874, s. 44.

[2] See Act XI, 1874, s. 45.

ACT X OF 1872.	BILL.	ACT X OF 1872.	BILL.
528 ...	142	535 ...	1, para. 2
529 ...	1, para. 2	536 ...	488
530 ...	145	537 ...	489
531 ...	146	538 ...	490
532 ...	147	539 ...	558, para. 1
533 ...	148, para. 1	540 ...	1, para. 2
534 ...	522	541 ...	1, para. 2

Table shewing correspondence of the section-numbers of Act XI of 1874 separately with those of the Bill.

ACT XI OF 1874.	BILL.	ACT XI OF 1874.	BILL.
1 ...	4, cls. (*q*) & (*r*), 28, 204, para. 1	23 ...	.....
		24, cl. 1 ...	.....
2 ...	4, para. 2, cl. 1	2 ...	415, *Expln.*
3 ...	380, para. 1	25 ...	548
4 ...	7, para. 1, cl. 2, para. 3	26 ...	Om., sec secs. 421, 423
		27 ...	422, cl. 2
5 ...	14, para. 3	28 ...	423
6 ...	192, para. 1, 528, para. 1	29, cl. 1 ...	436, cl. 1
		2 ...	*Proviso* (*b*)
7 ...	.....	30 ...	439
8 ...	425	31 ...	437
9 ...	178, *Proviso.*	32 ...	383, 390
10 ...	.....	33 ...	391, para. 2, 394
11 ...	527	34, cl. 1 ...	401, para. 1
12 ...	447, para. 2, 448	2 ...	4
13 ...	340	3 ...	.....
14 ...	209	35 ...	504, para. 1, 505, 507
15 ...	218, cl. 1	36 ...	165, para. 4
16 ...	254	37 ...	514, para. 5
17 ...	260, cl. (*i*)	38 ...	517, para. 1 & *Expln.*
18 ...	193, para. 1	39 ...	465, para. 2
19 ...	286	40 ...	232, *Ill.*
20 ...	288	41 ...	371, para. 1, 548
21 ...	306, para. 1, 307	42 ...	4, last para.
22, cl. 1 ...	410	43 ...	Chapter IX
2 ...	418, 423, cl. (*d*)	44 ...	514, para. 4
3 ...	371, para. 3	45 ...	137, para. 2
4 ...	.....		
5 ...	378, 429		

Table shewing correspondence of the section-numbers of the High Courts Act (X of 1875) with those of the Bill.

ACT X OF 1875.	BILL.	ACT X OF 1875.	BILL.
1 ...	...	31 ...	340
2 ...	2	32 ...	267
3 ...	4, 266	33 ...	274, 276
4 ...	334	34 ...	272
5 ...	335	35 ...	451
6 ...	5	36 ...	452
7 ...	226	37 ...	452
8 ...	226	38 ...	276
9 ...	227	39 ...	311
10 ...	227	40 ...	312
11 ...	228	41 ...	312
12 ...	229	42 ...	313
13 ...	210, 548	43 ...	313
14 ...	273, 403	44 ...	314
15 ...	231	45 ...	315
16 ...	230	46 ...	318
17 ...	233	47 ...	277, 278
18 ...	234	48 ...	279
19 ...	235	49 ...	276
20 ...	236	50 ...	316
21 ...	237	51 ...	317
22 ...	238	52 ...	.....
23 ...	239	53 ...	277
24 ...	225	54 ...	278
25 ...	534	55 ...	279
26 ...	220	56 ...	279
27 ...	336	57 ...	278
28 ...	271	58 ...	280
29 ...	271	59 ...	286
30 ...	272	60 ...	287

ACT X OF 1875.	BILL.	ACT X OF 1875.	BILL.
61 ...	342	92 ...	300
62 ...	289, 290	93 ...	299
63 ...	292	94 ...	301
64 ...	293	95 ...	303
65 ...	296	96 ...	302
66 ...	344	97 ...	305
67 ...	295	98 ...	305
68 ...	365	99 ...	283
69 ...	294	100 ...	308
70 ...	543	101 ...	434
71 ...	509	102 ...	240
72 ...	510	103 ...	384
73 ...	.....	104 ...	384, 385
74 ...	512	105 ...	386, 387
75 ...	288	106 ...	545, 546
76 ...	503, 504, 505, 507	107 ...	.....
77 ...	338	108 ...	392, 394, 395
78 ...	339	109 ...	35
79 ...	.....	110 ...	396
80 ...	540	111 ...	397
81 ...	90	112 ...	399
82 ...	87	113 ...	368
83 ...	89	114 ...	382
84 ...	90	115 ...	517
85 ...	291	116 ...	544
86 ...	94	117 ...	403
87 ...	96	118 ...	211
88 ...	104	119 ...	511
89 ...	485	120 ...	465
90 ...	297	121 ...	466
91 ...	298	122 ...	467

ACT X OF 1875.	BILL.	ACT X OF 1875.	BILL.
123 ...	468	139 ...	513
124 ...	470	140 ...	106
125 ...	471	141 ...	106
126 ...	473	142 ...	522
127 ...	472	143 ...	1
128 ...	474	144 ...	....
129 ...	475	145 ...	194
130 ...	341	146 ...	333
131 ...	196	147 ...	526
132 ...	197	148 ...	491
133 ...	195	149 ...	539
134 ...	195	150 ...	352
135 ...	476	151 ...	345
136 ...	498	152 ...	25
137 ...	514	153 ...	558
138 ...	514, 516		

Table shewing correspondence of the section-numbers of the Presidency Magistrates' Act (IV of 1877) with those of the Bill.

ACT IV OF 1877.	BILL.	ACT IV OF 1877.	BILL.
1 ...	.....	31 ...	537
2 ...	.....	32 ...	203
3 ...	1	33 ...	204
4 ...	.....	34 ...	90, 204
5 ...	342, 558	35 ...	204
6 ...	4	36 ...	90
7 ...	.....	37 ...	205
8 ...	7, 18, 19, 20, 25	38 ...	196
9 ...	18, 20, 21	39 ...	197
10 ...	3	40 ...	195
11 ...	32	41 ...	195
12 ...	33	42 ...	195
13 ...	35	43 ...	195
14 ...	5	44 ...	476
15 ...	64	45 ...	199
16 ...	164	46 ...	195, 196, 197
17 ...	551	47 ...	68
18 ...	177	48 ...	69
19 ...	179	49 ...	70
20 ...	180	50 ...	73
21 ...	182	51 ...	74
22 ...	181	52 ...	93
23 ...	185	53 ...	90
24 ...	531	54 ...	186
25 ...	191	55 ...	186
26 ...	.....	56 ...	75, 77
27 ...	204	57 ...	.....
28 ...	191	58 ...	76
29	198	59 ...	77
30 ...	200	60 ...	79

ACT IV OF 1877.	BILL.	ACT IV OF 1877.	BILL.
61 ...	.....	92 ...	216
62 ...	65	93 ...	217
63 ...	82	94 ...	221
64 ...	83, 84	95 ...	222
65 ...	85, 86	96 ...	223
66 ...	.....	97 ...	554
67 ...	87	98 ...	225
68 ...	88	99 ...	227
69 ...	89	100 ...	227
70 ...	63, 496	101 ...	228
71 ...	497	102 ...	229
72 ...	499	103 ...	231
73 ...	500	104 ...	230
74 ...	496	105 ...	233
75 ...	501	106 ...	234
76 ...	502	107 ...	235
77 ...	514	108 ...	236
78 ...	514	109 ...	237
79 ...	514	110 ...	238
80 ...	513	111 ...	239
81 ...	207	112 ...	240
82 ...	208	113 ...	403
83 ...	208, 353	114 ...	241, 370
84 ...	364	115 ...	362
85 ...	540	116 ...	254
86 ...	344	117 ...	246, 537
87 ...	209	118 ...	247, 259
88 ...	210	119 ...	242
89 ...	210, 213, 220	120 ...	243, 255
90 ...	210	121 ...	244, 256
91 ...	211, 212, 218, 219, 291	122 ...	254, 255
		123 ...	364

ACT IV OF 1877.	BILL.	ACT IV OF 1877.	BILL.
124 ...	92, 344	155 ...	512
125 ...	248	156 ...	350
126 ...	245, 258, 370	157 ...	503
127 ...	347	158 ...	503
128 ...	348	159 ...	96
129 ...	495	160 ...	98
130 ...	340	161 ...	101
131 ...	341	162 ...	102
132 ...	352	163 ...	102
133 ...	259, 345	164 ...	102
134 ...	540	165 ...	103
135 ...	90	166 ...	52
136 ...	90	167 ...	411, 412
137 ...	87, 88	168 ...	417, 427
138 ...	89	169 ...	419
139 ...	542	170 ...	548
140 ...	91	171 ...	420
141 ...	485	172 ...	421
142 ...	244	173 ...	422
143 ...	252, 257	174 ...	423
144 ...	94	175 ...	426
145 ...	96	176 ...	428
146 ...	95	177 ...	537
147 ...	104	178 ...	537
148 ...	342	179 ...	423
149 ...	343	180 ...	404
150 ...	337	181 ...	526
151 ...	339	182 ...	441
152 ...	509	183 ...	383, 390
153 ...	510	184 ...	384
154 ...	511	185 ...	386, 387, 388, 389, 538

ACT IV OF 1877.	BILL.	ACT IV OF 1877.	BILL.
186 ...	535	217 ...	90, 114
187 ...	391	218 ...	116
188 ...	392	219 ...	119
189 ...	394	220 ...	118
190 ...	393	221 ...	123
191 ...	395	222 ...	112
192 ...	396	223 ...	123
193 ...	397	224 ...	120
194 ...	464	225 ...	124
195 ...	469	226 ...	126
196 ...	466	227 ...	121
197 ...	467	228 ...	514
198 ...	468	229 ...	514
199 ...	470	230 ...	511
200 ...	471	231 ...	107, 109, 110
201 ...	473	232 ...	111
202 ...	472	233 ...	522
203 ...	474	234 ...	488
204 ...	475	235 ...	489
205 ...	480	236 ...	490
206 ...	246, 482	237 ...	558
207 ...	484	238 ...	184
208 ...	106	239 ...	184
209 ...	106	240 ...	432
210 ...	120	241 ...	433
211 ...	.....	242 ...	250, 563
212 ...	109	243 ...	517
213 ...	110	244 ...	517, 523, 524
214 ...	110	245 ...	544
215 ...	107	246 ...	44
216 ...	112, 113	247 ...	42

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

Printed & published for the GOVT. OF INDIA *at the Office of* SUPDT. GOVT. PRINTING, *166, Dhurrumtollah Street Calcutta.*

The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 4, 1882.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th January, 1882, and was referred to a Select Committee :—

No. 3 OF 1882.

A Bill to amend the Code of Civil Procedure.

Preamble.

For the purpose of amending the Code of Civil Procedure; It is hereby enacted as follows:—

Amendment of section 266.

1. In the proviso to section 266 of the said Code, for clause (*h*), the following shall be substituted, namely :—"(*h*) the salary of a public officer, or of any servant of a railway company, when such salary does not exceed twelve rupees *per mensem*, and one moiety of the salary of any such officer or servant, when his salary exceeds that amount;"

Amendment of sections 434 and 650A.

2. In section 434 of the said Code, line 3, before the word "Courts", and in section 650A of the said Code, line 1, before the word "Court", the words "Civil or Revenue" shall be inserted; and the following words shall be added to the latter section, namely:—"The Governor General in Council may by like notification cancel any notification made under this section, but not so as to invalidate the service of any summons previously served."

Amendment of section 539.

3. In section 539 of the said Code, after the word "charitable" the words "or religious" shall be inserted; in clauses (*a*) and (*b*) of the same section, for the words "of the charity," the words "under the trust" shall be substituted, and in the last paragraph of the same section, before the word "exercised" the words "with the previous sanction of the Local Government" shall be inserted.

4. The following section shall be inserted after section 645 of the said Code (namely):—

Assessors in causes of salvage, &c.

"645A. In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may if it think fit, and upon request of either party to such cause shall, summon to its assistance, in such manner as the Court may by rule, from time to time, direct, two competent assessors; and such assessors shall attend and assist accordingly.

"Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid by such of the parties as the Court in each case may direct."

Repeal of enactments.

5. Act No. X of 1840, section two, and Act No. VII of 1880, section eighty-five, are hereby repealed.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to make two or three small amendments of the Code which the experience of the last three years has shewn to be desirable. Section 266 of the Code now exempts from attachment a moiety of the salaries of Government servants and Railway servants. It is now proposed to exempt entirely the salaries of such servants when below a certain small amount, say Rs. 12 per mensem. The proposed legislation is supported by the Local Governments of Bombay, Madras and the North-Western Provinces. The object of course is to benefit the public by providing (as far as the law can do so) that its servants shall not be reduced to a state of inefficiency by the action of their creditors.

The learned Advocate-General of Bengal has held that in section 539, which provides for suits relating to public charities, the word "charitable" does not include, as it would do in England, "religious"; there seems, therefore, no means of getting the Court to settle a scheme for the administration of a public religious endowment, and great inconvenience has been felt in consequence both in the Lower Provinces and the Panjáb. The second object of the Bill is therefore to amend this section by inserting after "charitable" the words "or religious"; and section 2 of Act No. X of 1840, which might impede the framing of a scheme for the endowment to which it relates, will be repealed.

Doubts, again, have been raised as to whether sections 434 and 650 A refer to Revenue, as well as to Civil, Courts, and whether a notification issued under the latter section can be cancelled. The Bill will preclude these doubts.

Lastly, the opportunity has been taken to transfer to its proper place in the Code the section (65) in Act VII of 1880, providing for the assistance of assessors in certain causes in Courts exercising Admiralty or Vice-Admiralty jurisdiction.

WHITLEY STOKES.

CALCUTTA;
The 16th January, 1882.

R. J. CROSTHWAITE,
Offg. Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 19th January 1882:—

WE, the undersigned Members of the Select Committee to which the Bill to consolidate and amend the law relating to Criminal Procedure was referred, have the honour to report that we have considered the Bill and the papers noted in the Schedule annexed to this Report.

We have made in the Bill only three important amendments:—

First, we think that the present law gives too great latitude to the Courts with regard to the examination of an accused person. The object of such examination is to give the accused an opportunity of explaining any circumstances which may tend to criminate him, and thus to enable the Court, in cases where the accused is undefended, to examine the witnesses in his interest. It was never intended that the Court should examine the accused with a view to elicit from him some statement which would lead to his conviction. We have therefore limited the power of interrogating the accused by adding to the first paragraph of section 342 the words "for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him." We think the accused should always have this opportunity of explaining, and we have therefore required the Court to question him generally for that purpose before he enters on his defence.

Next, we have amended the law as to whipping. We have provided, in section 32, that no Magistrate of the second class shall pass a sentence of whipping unless specially empowered in that behalf by the Local Government. We have also provided, in section 392, that whipping shall be inflicted with a light ratan not less than half an inch in diameter, and we have abolished whipping with a cat-of-nine-tails. We have also added a clause containing the provisions of section 7 of Act VI of 1864, and in addition thereto we have prohibited the infliction of whipping on any person whom the Court considers to be more than 45 years of age.

Thirdly, we are of opinion that it is unnecessary and inexpedient to retain in section 423 the power which Appellate Courts have at present of enhancing sentences on appeals presented by convicted persons, and we have accordingly withdrawn it.

We have also made the following minor amendments in the Bill:—

CHAPTER I.—*Preliminary.*

At the suggestion of Colonel Weldon, the Chief Magistrate of Madras, we have omitted Madras from the saving provisions of clause (*a*), section 1. The Bill will thus apply

NOTE.—The chapters and sections referred to in the report are the chapters and sections of the Bill as introduced.

to the police in the town of Madras, and we have, therefore, repealed so much of Madras Act VIII of 1867, and the Coroners' Act, 1881, as declared what provisions of the Code of Criminal Procedure were applicable to the police of Madras. As, however, it is inexpedient to displace the Coroners' Act, IV of 1871, we have added a clause (*q*) providing that the provisions contained in sections 175 to 177 of the Bill, both inclusive, relating to inquests, shall not apply to the police in the town of Madras.

We have altered the definition of "complaint" so as to show that the allegation made to the Magistrate may be either oral or in writing.

We have re-drawn section 5 so as to provide clearly that an offence punishable under a law other than the Indian Penal Code is to be tried in accordance with the provisions of the Bill, but subject to any enactment regulating the manner or place of inquiring into or trying such offence.

CHAPTER II.—*Constitution of Criminal Courts and Offices.*

In the first paragraph of section 17 we have added words giving the District Magistrate power to make rules as to the distribution of business among the Magistrates and Benches in his district. We have also, in the third paragraph, given the Sessions Judge a similar power with regard to the distribution of business among Assistant Sessions Judges.

In section 21 we have added words expressly declaring that every Chief Magistrate shall exercise in the Presidency-town to which he is appointed all the powers conferred on him by this Code.

CHAPTER III.—*Powers of Courts.*

In section 31, third paragraph, we have given an Assistant Sessions Judge power to pass a sentence of transportation for a term not exceeding seven years. The Bill, following section 18 of the present Code, gave the Assistant Sessions Judge no power to pass a sentence of transportation. As the Code gives him power to pass a sentence of seven years' imprisonment, which under section 59, Indian Penal Code, he could commute to transportation for seven years, it would seem that the omission of the power of passing a sentence of transportation was merely due to an oversight in drafting.

At the suggestion of the Government of Bengal we have omitted section 38, conferring police powers on Magistrates. We consider that it is inexpedient to invest Magistrates with such powers or to make their connection with the Police more close than it is at present.

We have confined to the Local Government the power, given by section 41, of withdrawing powers conferred under the Code. Powers once conferred should not be lightly withdrawn, and we consider it expedient that District Magistrates should not be able to withdraw powers already conferred on their subordinates.

CHAPTER IV.—*Aid and Information to the Magistrates, &c.*

We have amended section 42 so as to provide that a person is only bound to assist a Magistrate or police-officer who *reasonably* demands his aid.

In clause (*b*) of the same section we have included attempts to injure telegraphs in the list of offences which persons are bound to assist in preventing.

Clause (*d*), requiring persons to assist the police in extinguishing fires, does not, we think, properly belong to a Code of Criminal Procedure, and we have therefore omitted it.

Section 45 renders it incumbent on native officers who are employed in the collection of revenue or rent of land on the part of Government or the Court of Wards to give information of certain matters to the Magistrate or police-officer. We see no reason why this duty should not also be imposed on all officers so employed, whether they are, or are not, natives of India. We have, therefore, omitted the word "native."

CHAPTER V.—*Of Arrest, Escape and Re-taking.*

We have made the last paragraph of section 46 run thus :—"Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death."

In section 52 we have provided that, when it is necessary to cause a woman to be searched, the search shall be made by another woman and with strict regard to decency.

To the persons who, under the provisions of section 54 may be arrested without warrant, we have added "any person having in his possession without lawful excuse any implement of house-breaking."

At the suggestion of the Madras Government we have provided in section 59 that any private person may arrest any person who has been proclaimed as an offender.

In section 62 we have provided that the police shall report to the Magistrate the cases of all persons detained under section 57 for refusing to give their names and addresses.

In section 67 we have added section 49 (as to breaking open doors for purposes of liberation) to the provisions applicable in cases when a person arrests, under section 66, another person who has escaped from lawful custody.

CHAPTER VI.—*Processes to compel Appearance.*

We have provided that section 68, which prescribes the form of summons and the persons by whom it is to be served, shall apply to the Presidency-towns.

In section 70 we allow a summons to be served in a Presidency-town by leaving a duplicate with a servant residing with the person summoned.

Section 75 required that a warrant should be sealed by the presiding officer of the Court issuing it. This, it is represented, will cause needless trouble to the presiding officer, and we have, therefore, said that the warrant shall bear the seal of the Court.

We have declared that section 85, which provides for the case of warrants directed to a police-officer, and which are to be executed beyond the local limits of the jurisdiction of the Court issuing them, shall apply to the police in the towns of Calcutta and Bombay.

CHAPTER VII.—*Processes to compel Production of Documents, &c.*

In the last clause of section 95, providing for the issue of a summons to produce a document or other thing, we have provided that nothing in the section shall be deemed to affect the Indian Evidence Act, sections 123 and 124—sections which regulate the giving of evidence as to affairs of State and the disclosure of official communications.

In section 104, directing search to be made in the presence of witnesses, we have provided that the list of things found in the search shall specify the place or places in which they are respectively found, and that a copy of the list, signed by the witnesses, shall be delivered to the occupant or person in charge of the place searched, if he so request.

CHAPTER VIII.—*Of Security for keeping the Peace and for Good Behaviour.*

The extension in section 108 of the term, for which a Magistrate may in the case of unconvicted persons require security to keep the peace, to three years is objected to. We are of opinion that the term of one year allowed by the present Code is sufficiently long, and have accordingly amended the section.

We agree with the Government of the North-Western Provinces that first class Magistrates should not be allowed to require security for good behaviour under section 111 unless they have been specially empowered in that behalf by the Local Government. We have amended the section accordingly.

To the first paragraph of the section (111) we have added words so as to allow of security for good behaviour being required from persons who habitually commit extortion, or, in order to the committing of extortion, habitually put or attempt to put persons in fear of injury. In the North-Western Provinces there is a class of bad characters who habitually extort money from respectable people by threatening to insult or beat them; and we have added this provision at the request of the Government of those Provinces, in order to enable Magistrates to protect the public against such a system of extortion.

To the first paragraph of section 118 we have added words to show that the Magistrate may, besides proceeding to inquire into the truth of the information upon which he has acted, also take such further evidence as may appear necessary.

In section 124, which provides for imprisonment in default of security, we have allowed the person so imprisoned to give the security required to the officer in charge of the jail wherein he is confined, as well as to the Court or Magistrate requiring the security.

In section 126 we have required the District Magistrate to record in writing his reasons for cancelling a bond for keeping the peace.

To the first paragraph of section 127 we have added words to show that a Magistrate can only exercise the power of discharging sureties in the case of a bond executed within the local limits of his jurisdiction.

CHAPTER X.—*Public Nuisances.*

We concur with the majority of officers consulted in objecting to the addition, in the third paragraph of this section, of the words "offensive to the religious feelings of any considerable section thereof," and we have accordingly struck them out.

CHAPTER XII.—*Disputes as to Immoveable Property.*

To section 146 we have added a paragraph to the effect that nothing in the section is to prevent a party who is called on to attend the Court from showing that no dispute exists or has existed, and that in such case the Magistrate shall cancel his order, and further proceedings shall be stayed.

To section 149 we have added a paragraph giving the Magistrate power to make orders as to the payment of costs incurred by parties to proceedings under chapter XII.

CHAPTER XIV.—*Information to the Police and their Powers to investigate.*

We have made the rule contained in section 163 as to statements made to the police expressly subject to the provisions of section 27 of the Indian Evidence Act, 1872.

In section 167, second paragraph (when the officer in charge of a police-station may require another to issue search-warrant), we have omitted, as unnecessary, the provisions for the case where the thing searched for is found in a different district.

The last part of the first paragraph of section 168, which provides that the accused need not be forwarded to the Magistrate if the police-officer thinks that he should not be so forwarded, has been objected to on the ground that it leaves too great a discretion to the police—a discretion which it is feared they will abuse. We concur with this objection, and have therefore altered the section so as to leave the present law unchanged.

CHAPTER XV.—*Jurisdiction of Criminal Courts in Enquiries and Trials.*

We have amended the second paragraph of section 193 so as to authorize the District Magistrate to empower a Magistrate of the first class who has taken cognizance of a case to transfer it for enquiry or trial to any other specified and competent Magistrate.

Where a subordinate Court has refused its sanction to a prosecution for any offence mentioned in section 196, we have given power to the superior Court to grant such sanction.

CHAPTER XVI.—*Complaints to Magistrates.*

In section 203 we have provided that, when a Magistrate decides on postponing the issue of process and directing a local investigation, he must first record his reasons for distrusting the truth of the complaint.

We have authorized a Magistrate so postponing the issue of process to inquire into the case himself; and have also made it clear that he may order the local investigation to be made by a person not being a Magistrate or police-officer.

CHAPTER XVII.—*Commencement of Proceedings before Magistrates.*

In section 205 the Bill provided that, "if the case appears to be one in which according to that column a warrant should issue in the first instance, the Magistrate shall ordinarily issue his warrant." We think that it should be made clear that the Magistrate may in his discretion issue either a summons or warrant in the first instance, and have, therefore, made the sentence run thus:—"he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear," &c.

In the second paragraph of section 206 we have authorized the Magistrate inquiring into or trying the case, instead of the Magistrate issuing a summons, to direct the personal attendance of the accused.

CHAPTER XIX.—*Of the Charge.*

To section 235, which provides that three offences of the same kind within one year may be charged together, we have added a clause to show the meaning of the words "offences of the same kind."

We have made section 236, paragraph III, run thus:—"If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, or for any offence constituted by any one or more of such acts."

CHAPTER XXI.—*Trial of Warrant-cases by Magistrates.*

In section 258 we have added words to show that where an accused applies to the Magistrate to summon a witness his application can only be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice, and that, if so refused, the Magistrate shall record the ground of refusal in writing.

CHAPTER XXII.—*Of Summary Trials.*

We have given power to try cases summarily under section 261 to any Bench of Magistrates invested with the powers of a Magistrate of the first class, and specially empowered in this behalf by the Local Government.

To section 263 we have added a clause providing that no sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction on a summary trial.

CHAPTER XXIII.—*Trials before High Courts and Courts of Session.*

Section 274 gives any Judge power to enter on a charge that there is no legal evidence to sustain it, and that such entry shall have the effect of staying proceedings on the charge. It is objected that this power, which is now given only to High Court Judges, will enable a Sessions Judge to quash a commitment. We have altered the section accordingly and made it accord with the present law.

In section 288, which provides for the procedure when a juror ceases to attend, we have added a provision to meet the case of a juror not understanding the language in which evidence is given or interpreted.

To section 290 we have added a paragraph to authorize the Court to record a finding, or direct a jury to return a verdict of not guilty in a case where the accused says that he means to adduce evidence in his defence, but the Court is of opinion that there is no evidence that the accused committed the offence.

After section 310 we have inserted a section providing that, when an accused is charged with a previous conviction, that charge shall not be read out to the jurors or assessors until the accused has pleaded guilty to, or been convicted of, the substantive offence for which he is to be tried.

We have altered section 326, which provides for the summoning of assessors, so as to preclude a doubt as to whether the law requires sessions to be held on dates fixed beforehand at the commencement of each year.

To section 333 we have added words empowering the Judge to direct that the discharge, when the Advocate General stays the prosecution, shall amount to an acquittal.

CHAPTER XXIV.—*General Provisions as to Inquiries and Trials.*

Opinions are much divided as to the change of the law in section 337, which permits a Magistrate to tender a pardon to an accused person in any warrant case. On the whole, we are of opinion that no such change should be made, and we have accordingly amended the section.

In cases where a pardon is tendered and accepted by a person, and such person gives evidence before a Magistrate in a preliminary inquiry, we consider that he should not be forced to adhere to that evidence in a subsequent trial, through fear of being prosecuted on an alternative charge of giving false evidence either before the Magistrate or the Judge. It might happen that he was wrongly induced or coerced into giving evidence before the Magistrate. We have accordingly provided in section 339 that no prosecution for giving false evidence in a statement made under promise of pardon shall be entertained without the sanction of the High Court.

We have removed sections 337 and 338 of the Indian Penal Code from the table of compoundable offences in section 345, and placed them in the second paragraph of that section, thereby making the consent of the Court necessary to the compounding of offences under those sections.

We have added to the same table section 298, Indian Penal Code (uttering words, &c., with deliberate intent to wound religious feelings), and section 355 of the same Code (assault with intent to dishonour a person).

We have struck out the offence of cheating under section 417, Indian Penal Code, from the list of compoundable offences, in deference to almost unanimous opinion on the subject.

We have substituted the words "after hearing the evidence for the prosecution and the accused" for the words "upon concluding a trial" in the first paragraph of section 349; and we have extended the section to the case where the Magistrate trying the accused considers that he ought to be required to execute a bond to keep the peace.

CHAPTER XXV.—*Mode of Taking and Recording Evidence.*

We have made the provisions of section 356, as to the record of evidence, applicable to cases under chapter XII (disputes as to immoveable property).

We have exempted the Chief Court of the Panjáb from the rule, contained in section 364, as to the mode of recording the examination of an accused person.

We have also provided that, when the accused does not understand the language in which his examination is recorded, it is to be interpreted to him.

CHAPTER XXVI.—*Of the Judgment.*

We think that, when the original judgment is recorded in a different language from that of the Court, a translation need not under section 372 be filed with the record, except when the accused so requires; and we have amended the section accordingly.

Section 373, which provides that the Court of Session shall forward a copy of its judgment to the District Magistrate, is objected to as involving unnecessary labour. We have therefore, following the present Code (section 302), required the Court to forward only a copy of the finding and sentence.

CHAPTER XXVII.—*Submission of Sentences for Confirmation.*

In section 375 we have given the High Court power to make or order a further inquiry to be made, as well as to take or order additional evidence to be taken, in the case of capital sentences submitted to it for confirmation.

CHAPTER XXVIII.—*Of Execution.*

We have amended section 388 so as to show that it is intended to allow the Court, in a case when an offender has been sentenced to fine only and to imprisonment in default of pay-

ment of fine, to suspend the execution of the sentence of imprisonment and release him on his furnishing security. We have also provided that, in the event of the fine not being realized, the Court may direct the sentence of imprisonment to be carried into effect.

Section 395 provides that, where a sentence of whipping cannot be executed, the offender shall not be sentenced in lieu of the whipping to a longer term of imprisonment than three months. This term has been generally objected to as inadequate, and we have, therefore, altered it to twelve months.

We have also provided that the section shall not be deemed to authorize a Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the Court is competent to inflict.

CHAPTER XXIX.—*Suspensions, Remissions and Commutations.*

Instead of requiring a Judge to furnish a statement of the facts proved on a trial, and of any facts having reference to the propriety of granting an application for the suspension or remission of a sentence, we think it will be enough to require him to state his opinion as to whether the application shall be granted or refused, together with his reasons for such opinion, and we have altered section 401 accordingly.

In the last paragraph of section 402, which gives power to the Governor General in Council or the Local Government to commute sentences, we have, to remove doubts, added after the words "rigorous imprisonment" the words "for a term not exceeding that to which he might have been sentenced." We have also added after the words "simple imprisonment" the words "for a like term." It has been supposed that the corresponding section (322) of the present Code gave the Government power to commute a sentence of transportation, for instance, to a sentence of imprisonment exceeding that for which the offender was liable under the law under which he was convicted. The words we have added will, it is hoped, prevent such a misunderstanding for the future. We have also added "fine" as one of the punishments for which a sentence may be commuted.

CHAPTER XXXI.—*Of Appeals.*

In the last proviso to section 423 we have authorized a Court to alter or reverse the verdict of a jury if it is of opinion that such verdict is erroneous owing to a misunderstanding, on the part of the jury, of the law as laid down by the Judge.

To section 424, regulating the judgment of subordinate Appellate Courts, we have added a proviso that, unless the Appellate Court otherwise directs, the accused shall not be brought up or required to attend to hear judgment delivered.

We have in section 426 given the High Court power, in the case of an appeal by a convicted person to a Court subordinate to the High Court, to suspend the sentence and release the convicted person on bail.

In section 439 we have added to the powers of revision which may be exercised by the High Court the powers conferred on a Court of Appeal by section 196 (granting or revoking sanction to prosecute in certain cases) or on a Court by section 338 (power to direct tender of pardon) and the power of enhancing a sentence.

We have also provided that nothing in this section applies to an entry on an unsustainable charge made under section 274 by a Judge of a High Court, or shall be deemed to authorize a High Court to convert an order of acquittal into one of conviction.

CHAPTER XXXV.—*Proceedings in Case of certain Offences affecting the Administration of Justice.*

In section 476 (procedure in contempt cases) we have said that the Court may send the case for enquiry or trial to "the nearest Magistrate of the first class" instead of "to the District Magistrate."

We have added to section 480 (procedure in certain cases of contempt) a paragraph declaring that section 443, which says that certain Magistrates only can try European British subjects, does not apply to this section.

In section 486 we have made the whole of the chapter (XXXI) on appeals, so far as it is applicable, apply to appeals from convictions in contempt cases.

CHAPTER XXXVI.—*Maintenance of Wives and Children.*

We have amended the third paragraph of section 488 (order for maintenance of wives and children) so as to show that imprisonment is to be awarded only when the allowance remains unpaid after the execution of the warrant of distress.

We have added to the section a paragraph giving the Magistrate power to cancel an order for maintenance when it is proved that the wife is living in adultery, or without sufficient reason refuses to live with her husband, or that they are living separately by mutual consent.

We have also provided that evidence under this chapter shall be recorded in the presence of the husband or father, as the case may be, and in the manner prescribed in the case of summons cases.

CHAPTER XXXVII.—*State-Prisoners.*

This chapter has, in accordance with the wishes of the Secretary of State, been omitted from the Bill; the enactments which this chapter consolidated have been struck out of the schedule of repeals; and the form of warrant of commitment under section 491 has been omitted from schedule V.

CHAPTER XLII.—*Special Rules of Evidence.*

We have omitted the rule contained in section 521 as to presuming good faith in certain cases, as it conflicts with section 105 of the Indian Evidence Act.

CHAPTER XLIV.—*Disposal of Property.*

In the second paragraph of section 528 we have said that the High Court or Court of Session may direct the District Magistrate, instead of the committing Magistrate, to carry into effect its order for the disposal of property. The committing Magistrate might be transferred before the order was made.

We have excepted perishable property from the rule, contained in the third paragraph, that no order for the disposal of property shall be carried out till the period of appeal has elapsed, or, if an appeal is presented, till the appeal has been dismissed.

Section 532 authorizes the Court on a conviction for certain offences to order all the copies of the thing in respect of which the conviction was had, and which remain in the possession or power of the convicted person, to be destroyed. We have extended this power to copies which are in the custody of the Court.

CHAPTER XLVI.—*Irregular Proceedings.*

Before clause (*d*), section 541 (irregularities which vitiate proceedings), we have added the case where a Magistrate not being empowered by law in this behalf tries an offender.

In section 544, which provides for the case where the confession or statement of an accused person has not been duly recorded, it is provided that "unless the error injures the accused as to his defence on the merits, it shall not affect the admissibility of the statement." For this provision we have substituted the following:—"and notwithstanding anything contained in the Indian Evidence Act, section 91, such statement shall be admitted, if the error has not injured the accused as to his defence on the merits."

To the irregularities mentioned in section 548, which are not to justify the setting aside of a finding, sentence or order of a Court of competent jurisdiction, we have added irregularities in the warrant, and have included irregularities in any inquiry or other proceeding under the Code as well as irregularities in a trial.

We have also added "the omission to revise any list of jurors or assessors in accordance with section 324."

CHAPTER XLVII.—*Miscellaneous.*

We have amended section 560, which regulates the delivery to the military authorities of persons liable to be tried by court-martial, and given the Governor General in Council power to make rules, consistent with the Code, the Army Act, 1881, and any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried by a Court constituted under the Code or by court-martial.

We have modified section 564, which gives power to the High Courts to make certain rules, and have provided that the rules for regulating the practice of High Courts not established by Royal Charter and of Courts subordinate to such Courts shall be made with the previous sanction of the Local Government. We have also added a power to make, with the like sanction, rules for regulating the execution of warrants issued under the Code for the levy of fines.

After section 565 we have added a section providing that no Judge or Magistrate shall, except with the permission of the Appellate Court to which an appeal from his judgment lies, try any case to or in which he is a party or personally interested, and that no Judge or Magistrate shall hear an appeal from an order made by himself.

Schedule I.

We think that the power which Act V of 1861, section 24, expressly confers on the police, to lay informations and apply for summonses and other legal processes, should remain intact, and we, therefore, propose to repeal only the last nine words of that section.

Schedule II.

At the request of the Government of Bombay we have made offences under section 19 of the Indian Arms Act, 1878, bailable.

Schedule III.

To the ordinary powers of Magistrates of the third class we have added the power to restore attached property (section 90).

To the ordinary powers of a Magistrate of the first class we have added the power to issue search-warrants for persons unlawfully confined (section 101), and the power to stop proceedings where there is no complaint (section 250).

To the ordinary powers of a Sub-divisional Magistrate we have added the power to direct warrants to landholders (section 78).

To the ordinary powers of a District Magistrate we have added the power to cancel bonds for keeping the peace (section 126).

Schedule IV.

We have re-arranged and amended this schedule, adding a division as to the powers with which a Sub-divisional Magistrate may be invested.

Schedule V.

We have shortened several of the forms contained in this schedule, omitted others as unnecessary, and given a form of a charge after a previous conviction.

We have made several verbal amendments in the body of the Bill. It has been duly published, and we recommend that it be passed as now amended; but first we think that it should be published thrice in the *Gazette of India*.

WHITLEY STOKES.
RIVERS THOMPSON.
J. GIBBS.
H. REYNOLDS.
JOTÍNDRA MOHAN TAGORE.
LOUIS FORBES.
C. H. T. CROSTHWAITE.

The 18th January, 1882.

SCHEDULE.

From H. Beverley, Esq., Additional Judge, 24-Parganas, dated 12th April, 1879, [Paper No. 1.]

From Acting Chief Secretary to Government, Madras, No. 717, dated 31st March, 1879. and enclosure. [Papers No. 2.]

From Bábú Kanaya Lál, Pleader, Judicial Commissioner's Court, Oudh, dated 15th April, 1879. [Paper No. 3.]

From R. F. Rampini, Esq., Additional Sessions Judge, Chittagong, dated 23rd April, 1879. [Paper No. 4.]

From F. J. Goldsmid, Esq., District Superintendent of Police, Ahmadnagar, dated 28th April, 1879. [Paper No. 5.]

From J. B. Pennington, Esq., District Magistrate, Tinnevelly, No. 503, dated 1st May, 1879. [Paper No. 6.]

From W. M. Coghlan, Esq., Sessions Judge, Tanna, No. 862, dated 13th May, 1879. [Paper No. 7.]

From F. M. Halliday, Esq., Commissioner, Patna, to Secretary to Government, Bengal, Legislative Department, No. 170 J, dated 27th May, 1879, and enclosure. [Papers No. 8.]

From F. C. Constable, Esq., Barrister-at-law, Karáchí, dated 28th May, 1879, and enclosure. [Papers No. 9.]

From J. C. Geddes, Esq., Officiating Judge, Bardwán, No. 1068, dated 9th June, 1879. [Paper No. 10.]

Note by A. G. Macpherson, Esq., dated 30th May, 1879. [Paper No. 11.]

From H. Beveridge, Esq., District and Sessions Judge, Rungpur, dated 9th June, 1879, and enclosure. [Papers No. 12.]

Office Memorandum from Military Department, No. 839 S-C, dated 30th June, 1879, and enclosure. [Papers No. 13.]

Note by T. M. Kirkwood, Esq., Officiating Judge, Tirhút, dated 30th July, 1879. [Paper No. 14.]

From A. M. B. Irwin, Esq., Assistant Commissioner, Sittoung Sub-division, British Burma, dated 21st July, 1879. [Paper No. 15.]

From Hon'ble H. S. Cunningham, dated 31st July, 1879, and enclosure. [Papers No. 16.]

From Secretary for Birár to Resident, Haidarábád, No. 18, dated 21st August, 1879, and enclosures. [Papers No. 17.]

Memorandum by Pandit Srí Kishen, Pleader, High Court, Oudh, dated 14th July, 1879. [Paper No. 18.]

From P. C. Rozario, Esq., Pleader, District Court, Mangalore, dated 20th August, 1879. [Paper No. 19.]

From Secretary for Birár to Resident, Haidarábád, No. 20, dated 28th August, 1879, and enclosure. [Papers No. 20.]

From Secretary to Chief Commissioner, Mysore, No. 4292-J 12, dated 29th August, 1879, and enclosures. [Papers No. 21.]

From Acting Under-Secretary to Government, Bombay, No. 5393, dated 8th September, 1879, and enclosures. [Papers No. 22.]

From Acting Under-Secretary to Government, Bombay, No. 5564, dated 15th September, 1879, and enclosures. [Papers No. 23.]

From Chief Commissioner, Ajmer-Merwára, No. 765, dated 16th September, 1879, and enclosures. [Papers No. 24.]

From Mr. T. Rámá Rau and others, Vákíls, High Court, Madras. [Paper No. 25.]

From Assistant Secretary to Chief Commissioner, Central Provinces, No. 3924-213, dated 24th September, 1879, and enclosures. [Papers No. 26.]

From Acting Under-Secretary to Government, Bombay, No. 5755, dated 23rd September, 1879, and enclosure. [Papers No. 27.]

From Acting Chief Secretary to Government, Madras, No. 2295, dated 5th September, 1879, and enclosures. [Papers No. 28.]

From Mr. A. Nubba Rau and others, Pleaders, District Court, Mangalore, dated 19th September, 1879. [Paper No. 29.]

From Secretary to Chief Commissioner, Assam, No. 1819, dated 30th September, 1879, and enclosures. [Papers No. 30.]

From Acting Chief Secretary to Government, Madras, No. 2485, dated 26th September, 1879, and enclosure. [Papers No. 31.]

From Acting Under-Secretary to Government, Bombay, No. 6579, dated 31st October 1879, and enclosure. [Papers No. 32.]

From Mr. Ullal Raghevendra Rao, Mangalore, dated 14th September, 1879, and 2nd October, 1879. [Papers No. 33.]

From Acting Chief Secretary to Government, Madras, No. 2656, dated 15th October, 1879, and enclosure. [Papers No. 34.]

From Secretary to Government, Panjáb, No. 4055, dated 6th November, 1879, and enclosures. [Papers No. 35.]

From Acting Under-Secretary to Government, Bombay, No. 7229, dated 29th November, 1879, and enclosure. [Papers No. 36.]

From Secretary to Government, North-Western Provinces and Oudh, No. 286 A, dated 20th November, 1879, and enclosures. [Papers No. 37.]

From Secretary to Government, Bengal, No. 2407 T, dated 15th October, 1879, and enclosures. [Papers No. 38.]

From Acting Under-Secretary to Government, Bombay, No. 6693, dated 6th November, 1879, and enclosures. [Papers No. 39.]

From Secretary to Government, Panjáb, No. 4628, dated 23rd December, 1879, and enclosures. [Papers No. 40.]

From Secretary to Government, North-Western Provinces and Oudh, No. 47, dated 9th January, 1880, and enclosures. [Papers No. 41.]

From Hukm Chand and others, Mukhtárs in the Panjáb, dated 27th December, 1879, and enclosure. [Papers No. 42.]

Memorial of Bábú Nobin Chandra Chattarjí and others, Mukhtárs of Bírbhúm, dated 5th April, 1880. [Paper No. 43.]

From Officiating Secretary to Chief Commissioner, British Burma, No. 2276, dated 16th April, 1880, and enclosures. [Papers No. 44.]

From Acting Under-Secretary to Government, Bombay, No. 2878, dated 24th April, 1880, and enclosure. [Papers No. 45.]

Memorial of Bábu Náva Kissor and others, Mukhtárs, Silhat District, dated 24th May, 1880. [Paper No. 46.]

Memorials from Mukhtárs of sundry Districts. [Papers No. 47.]

From Secretary to Government, North-Western Provinces and Oudh, No. 849, dated 19th July, 1880, and enclosure. [Papers No. 48.]

From Secretary to Government, Panjáb, No. 208 S, dated 20th July, 1880. [Paper No. 49.]

Office Memorandum from late Home, Revenue and Agricultural Department, No. 793, dated 31st July, 1880. [Paper No. 50.]

From Chief Secretary to Government, Madras, to Secretary to Government of India, late Home, Revenue and Agricultural Department, No. 1546, dated 29th June, 1880, and enclosure. [Papers No. 51.]

From Under-Secretary to Government of India, late Home, Revenue and Agricultural Department, to Secretary to Government, Madras, No. 772, dated 23rd July, 1880. [Papers No. 51.]

From Registrar, High Court, Calcutta, No. 235, dated 8th February, 1881. [Paper No. 52.]

From Acting Under-Secretary to Government, Bombay, No. 1150, dated 22nd February, 1881, and enclosures. [Papers No. 53.]

From Secretary to Government, Bengal, No. 923 J, dated 26th February, 1881. [Paper No. 54.]

From Officiating Secretary to Government, North-Western Provinces and Oudh, No. 354, dated 31st March, 1881, and enclosure. [Papers No. 55.]

From A. M. B. Irwin, Esq., Assistant Commissioner, Sittoung Sub-division, British Burma, dated 17th June, 1881. [Paper No. 56.]

From Chief Secretary to Government, Bombay, to Officiating Secretary to Government of India, late Home, Revenue and Agricultural Department, No. 2464, dated 16th April, 1881, and enclosure. [Papers No 57.]

From Under-Secretary to Government of India, Home Department, to Secretary to Government, Bombay, No. 903, dated 15th July, 1881. [Papers No. 57.]

From Officiating Chief Commissioner, Ajmer-Merwára, No. 520, dated 27th July, 1881, and enclosure. [Papers No. 58.]

From Secretary to Chief Commissioner, Coorg, No. 633-10, dated 26th July, 1881, and enclosures. [Papers No. 59.]

From Officiating Registrar, High Court, Calcutta, No. 1327, dated 9th July, 1881, and enclosure. [Papers No. 60.]

From Her Majesty's Secretary of State, No. 29, dated 14th July, 1881.

From Secretary for Birár to Resident, Haidarábád, No. 326, dated 19th August, 1881, and enclosures. [Papers No. 61.]

From Officiating Junior Secretary to Chief Commissioner, British Burma, No. 5964-10 L, dated 29th August, 1881, and enclosures. [Papers No. 62.]

From Secretary to Government, Panjáb, No. 286S, dated 15th September, 1881, and enclosures. [Papers No. 63.]

From Secretary to Government, North-Western Provinces and Oudh, No. 1154, dated 19th September, 1881, and enclosures. [Papers No. 64.]

From Secretary to Government, North-Western Provinces and Oudh, No. 1174, dated 23rd September, 1881, and enclosure. [Papers No. 65.]

From Secretary to Government, North-Western Provinces and Oudh, No. 1192, dated 27th September, 1881, and enclosure. [Papers No. 66.]

From Chief Secretary to Government, Madras, No. 1941, dated 19th September, 1881, and enclosures. [Papers No. 67.]

From Secretary to Government, Panjáb, No. 357 S, dated 4th October, 1881, and enclosure. [Papers No. 68.]

From Chief Secretary to Government, Madras, No. 2009, dated 28th September, 1881, and enclosures. [Papers No. 69.]

From Officiating Registrar, High Court, Calcutta, No. 1930, dated 20th October, 1881, and enclosure. [Papers No. 70.]

From Chief Secretary to Government of Madras, No. 2022, dated 29th September, 1881, and enclosures. [Papers No. 71.]

From Chief Secretary to Government of Madras, No. 2162, dated 19th October, 1881, and enclosure. [Papers No. 72.]

From Under-Secretary to Government, Bombay, No. 7185, dated 31st October, 1881, and enclosure. [Papers No. 73.]

From Under-Secretary to Government, Bombay, No. 6890, dated 24th September, 1881, and enclosures. [Papers No. 74.]

From Officiating Secretary to Chief Commissioner, Central Provinces, No. 4167-132, dated 11th November, 1881, and enclosures. [Papers No. 75.]

Office memorandum from Home Department, No. 1598, dated 17th December, 1881. [Paper No. 76.]

From Secretary to Government, Bengal, No. 1J., dated 3rd January, 1882, and enclosures. [Papers No. 77.]

No. III.

THE CODE OF CRIMINAL PROCEDURE, 1882.

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No. III.

A Bill to consolidate and amend the law relating to Criminal Procedure.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows:—

PART I.
PRELIMINARY.

CHAPTER I.

Short title. Commencement.

1. This Act may be called "The Code of Criminal Procedure, 1882:" and shall come into force on the first day of January, 1883;

Act X, 1872, ss. 1, 2, 111, 529, 535, 540, 541. Act X, 1875, s. 148. Act IV, 1877, s. 3.

Local extent.

It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed,* by any other law now in force, or shall apply to—

* *e.g.*, Act V of 1869.

Act X, 1872, s. 540.

(*a*) the Commissioner of Police or the police in the towns of Calcutta and Bombay;

(*b*) any officer duly authorized to try petty offences in military bázárs at cantonments and stations occupied by the troops of the Presidencies of Fort St. George and Bombay respectively;

(*c*) heads of villages in the Presidency of Fort Saint George; or

(*d*) village Police-officers in the Presidency of Bombay:

(*e*) and nothing in sections 174, 175 and 176 shall apply to the Police in the town of Madras.

Act X, 1875, s. 2. Act X, 1872, s. 2, para. 1.

Repeal of enactments.

2. On and from the first day of January, 1883, the enactments mentioned in the first schedule shall be repealed to the extent specified in the third column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

Act X, 1872, s. 2, last para., s. 10.

Notifications, &c., under repealed Acts.

All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed and orders, rules and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of January, 1883, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed and made under the corresponding section of this Code.

Act X, 1872, s. 2, para. 3, cl. 4.

References to Code of Criminal Procedure.

3. In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No. XXV of 1861, or Act No. X of 1872, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section.

Expressions in former Acts.

In every enactment passed before this Code comes into force the expressions "Officer exercising (or 'having') the powers (or the 'full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class;" the expression "Magistrate of a division of a district" shall be deemed to mean "Sub-divisional Magistrate," the expression "Magistrate of the district" shall be deemed to mean "District Magistrate," and the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate."

Act IV, 1877, s. 10.

Act X, 1872, s. 4. Act IV, 1877, s. 6.

Interpretation.

4. In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

New. L. R. 501.

"Complaint."

(*a*) "Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence; but does not include the report of a Police-officer:

"Investigation."

(*b*) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by the police or by any person other than a Magistrate or Police-officer who is authorized by a Magistrate in this behalf:

"Inquiry."

(*c*) "Inquiry" includes every inquiry conducted under this Code by a Magistrate or Court:

"Inquiry into" ca

Penal C. 193. I. L. R. 6. 1 Mad. Rep. 4

"Judicial proceeding."

(*d*) "Judicial proceeding" means any proceeding in the course of which evidence is or may be legally taken:

"Writing."

(*e*) "Writing" and "written" include "printing," "lithography," "photography," "engraving," and every other mode in which words or figures can be expressed on paper or on any substance:

New.

"Sub-division."

(*f*) "Sub-division" means a sub-division made under this Code of a District:

New.

"Province."

(*g*) "Province" means the territories for the time being under the administration of any Local Government:

"Presidency-town."

(*h*) "Presidency-town" means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay:

Act X, 1875, s. 3, altered. Another definition *infra*, s. 267.

(*i*) "High Court" means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Panjáb and the Recorder of Rangoon: "High Court."

Query as to Special Court acting under the 79th section of the Burma Courts Act, 1875.

In other cases "High Court" means the highest Court of criminal appeal or revisión for any local area;

See précis, para. 160.

or, where no such Court is established under any law for the time being in force, such officer as the Governor General in Council may from time to time appoint in this behalf:

Act X, 1875, s. 3.

(*j*) "Chief Justice" includes also the senior Judge of a Chief Court: "Chief Justice."

Act X, 1875, s. 3. Act X, 1877, s. 539.

(*k*) "Advocate General" includes also a Government Advocate, or, where there is no Advocate General or Government Advocate, such officer as the Local Government may from time to time appoint in this behalf: "Advocate General."

Act X, 1875, s. 3.

(*l*) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown: "Clerk of the Crown."

New: see Act X, 1872, s. 57. Act X, 1875, s. 3. See 11 Bom. 103.

(*m*) "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor; and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction: "Public Prosecutor."

New.

(*n*) "Pleader" used with reference to any proceeding in any Court means a pleader authorized under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakíl and an attorney of a High Court so authorized, and (2) any mukhtár or other person appointed with the permission of the Court to act in such proceeding: "Pleader."

(*o*) "Police-station" means any post declared, generally or specially, by the Local Government to be a Police-station for the purposes of this Code; and "Officer in charge of a Police-station" includes, when the officer in charge of the Police-station is absent therefrom or unable from illness to perform his duties, the Police-officer next in rank present at the Police-station above the rank of constable, or, when the Local Government so directs, any other Police-officer so present: "Police-station." "Officer in charge of a Police-station."

Act X, 1872, s. 136.

(*p*) "Offence" means any act or omission made punishable by any law for the time being in force: "Offence."

(*q*) "Cognizable offence" means an offence for, and "cognizable case" means a case in, which a Police-officer, within or without the Presidency-towns may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant: "Cognizable offence." "Cognizable case." Act XI, 1874, s. 1.

"Non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a Police-officer, within or without the Presidency-towns, may not arrest without warrant: "Non-cognizable offence." "Non-cognizable case."

(*r*) "Bailable offence" means an offence shewn as bailable in the second schedule or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence: "Bailable offence." "Non-bailable offence." Act XI, 1874, s. 1.

(*s*) "Warrant-case" means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months: "Warrant-case."

(*t*) "Summons-case" means a case relating to an offence not so punishable: "Summons-case."

(*u*) "European British subject" means— Act X, 1872, s. 71.

(1) any subject of Her Majesty born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal; "European British subject." Act X, 1875, s. 3.

(2) any child or grand-child of any such person by legitimate descent:

(*v*) "Chapter" means a chapter of this Code; and "Schedule" means a schedule hereto annexed: "Chapter." "Schedule." New.

(*w*) "Place" includes also a house, building, tent and vessel. "Place." New.

Words referring to acts. Words which refer to acts done extend also to illegal omissions, and Act XI, 1874, s. 2.

Words to have same meaning as in Penal Code. all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code. *e.g.*, "special law," "local law." New. See Act XI, 1874, s. 42.

Trial of offences under Penal Code. **5.** All offences under the Indian Penal Code shall be inquired into and tried according to the provisions hereinafter contained; and all offences under any other law shall be inquired into and tried according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of inquiring into or trying such offences. Act X, 1872, ss. 6, 7, 11. Act X, 1872, ss. 6, 7, 8, paru. 1, 63, *Expl.* Trial of offences against other laws. Act X, 1875, s. 6. Act IV, 1877, s. 14.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

Of the Constitution of Criminal Courts and Offices.

A.—Classes of Criminal Courts.

Act X, 1872, ss. 5, 19.

6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely :—

Classes of Criminal Courts.

I.—Courts of Session :
II.—Courts of Presidency Magistrates :
III.—Courts of Magistrates of the first class :
IV.—Courts of Magistrates of the second class :
V.—Courts of Magistrates of the third class.

B.—Territorial Divisions.

Act X, 1872, s. 12.

7. Every Province (excluding the Presidency-towns) shall be a Sessions Division, or shall consist of Sessions Divisions ;

Sessions Divisions.

Act XI, 1874, s. 4.

and every Sessions Division shall, for the purposes of this Code, be a District or consist of Districts.

Districts.

Act X, 1872, ss. 13, 38.

The Local Government may alter the limits, or, with the previous sanction of the Governor General in Council, the number, of such Divisions and Districts.

Power to alter Divisions and Districts.

Act X, 1872, s. 14.

Act XI, 1874, s. 4.

The Sessions Divisions and Districts existing when this Code comes into force shall be Sessions Divisions and Districts respectively, unless and until they are so altered.

Existing Divisions and Districts maintained till altered.

Act IV, 1877, s. 8, para. 5.

Every Presidency-town shall, for the purposes of this Code, be deemed to be a District.

Presidency-towns to be deemed Districts.

Act X, 1872, s. 39.

8. The Local Government may divide any District outside the Presidency-towns into Sub-divisions, or make any portion of any such District a Sub-division, and may alter the limits of any Sub-division.

Power to divide Districts into Sub-divisions.

All existing Sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

Existing Sub-divisions maintained.

C.—Courts and Offices outside the Presidency-towns.

Act X, 1872, ss. 15, 16 17, 18.

9. The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court.

Court of Session.

It may also appoint Additional Sessions Judges, Joint Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

10. In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

Act X, 1872, s. 35.

District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Act X, 1872, s. 55.

Officers temporarily succeeding to vacancies in office of District Magistrate.

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any District outside the Presidency-towns ; and the Local Government, or the District Magistrate subject to the control of the Local Government, may from time to time define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Act X, 1872, ss. 37, 40.

Subordinate Magistrates.

Local limits of their jurisdiction.

Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such District.

13. The Local Government may place any Magistrate of the first or second class in charge of a Sub-division, and relieve him of the charge as occasion requires.

Act X, 1872, s. 40.

Power to put Magistrate in charge of Sub-division.

Such Magistrates shall be called Sub-divisional Magistrates.

The Local Government may delegate its powers under this section to the District Magistrate.

Delegation of power to District Magistrate.

14. The Local Government may confer upon any person all or any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the Presidency-towns.

Act X, 1872, s. 42.

Special Magistrates.

Such Magistrates shall be called Special Magistrates.

With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

Act [illegible], s. 3.

No powers shall be conferred under this section on any Police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

Act V, 1861, ss. 6.

15. The Local Government may direct any two or more Magistrates in any place outside the Presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

Act X, 1872, ss. 50, 224.

Benches of Magistrates.

Sufferuddin v. Ibrahim, 1. L.R., 3 Cal. 754.

Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is present taking part in the proceedings as a member of the Bench belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Act X, 1872, s. 51.

Powers exercisable by Bench in absence of special direction.

16. The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time make rules consistent with this Code for the guidance of Magistrates' Benches in any District respecting the following subjects :—

Act X, 1872, ss. 52, 53.

Power to frame rules for guidance of Benches.

(*a*) the classes of cases to be tried ;

(*b*) the times and places of sitting ;

(*c*) the constitution of the Bench for conducting trials ;

(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session.

17. All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may from time to time make rules consistent with this Act as to the distribution of business among such Magistrates and Benches ; and

Act X. 1872, s. 37, para. 2.

Subordination of other Magistrates to District Magistrate ;

every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a Sub-division shall be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

Act X .1872, s. 41.

to Sub-divisional Magistrate.

All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may from time to time make rules consistent with this Act as to the distribution of business among such Assistant Sessions Judges.

Subordination of Assistant Sessions Judges to Sessions Judge.

Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

Act X, 1872, s. 37, para.

D.—Courts of Presidency Magistrates.

18. The Local Government shall from time to time appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Act IV, 1877, ss. 8, 9.

Appointment of Presidency Magistrates.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

Act IV, 1877, s. 8, para. 3.

Local limits of their jurisdiction.

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April, 1877, was exercised in that town by the Court of Petty Sessions :

Act IV, 1877, s. 8, last para.; s. 9, last para.

Bombay Court of Petty Sessions.

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

21. Every Chief Magistrate shall exercise in the Presidency-town for which he is appointed all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Magistrate, and may from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

Act IV, 1877, s. 9.

Chief Magistrate.

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town ;

(*b*) the times and places at which Benches of Magistrates shall sit ;

(*c*) the constitution of such Benches ; and

(*d*) the mode of settling differences of opinion which may arise between Magistrates in session.

E.—Justices of the Peace.

22. The Governor General in Council, so far as regards the whole or any part of British India outside the Presidency-towns,

Act II, 1869, s. 3.

Justices of the Peace for the Mufassal.

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

Act II, 1869, s. 4.

Justices of the Peace for the Presidency-towns.

23. The Governor General in Council or the Local Government, so far as regards the town of Calcutta,

and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India and not being the subjects of any foreign State whom such Governor General in Council or Local Government (as the case may be) thinks fit.

Act II, 1869, s. 10.

Present Justices of the Peace.

24. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor General in Council to act as a Justice of the Peace for the whole of British India other than the same towns.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

13 Geo. III, c. 63, s. 38. Act X, 1875, s. 152. Act IV, 1877, s. 8.

Native High Court Judges are thus Justices of the Peace.

Ex officio Justices of the Peace.

25. In virtue of their respective offices, the Governor General, the Ordinary Members of the Council of the Governor General, the Judges of the High Courts and the Recorder of Rangoon are Justices of the Peace within and for the whole of British India, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

F.—Suspension and Removal.

Act X, 1872, s. 9.

Suspension and removal of Judges and Magistrates.

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government: Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor General in Council only shall not be suspended or removed from office by any other authority.

Act II, 1869, s. 9.

Suspension and removal of Justices of the Peace.

27. The Governor General in Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government may suspend or remove from office any Justice of the Peace appointed by it.

CHAPTER III.

Powers of Courts.

A.—Description of Offences cognizable by each Court.

s. 9., ss. 193, 194. Act XI, 1874, s. 1. Act IV, 1877 s. 4.

Offences under Penal Code.

28. Subject to the other provisions of this Code, any offence under the Indian Penal Code may be tried by the High Court or Court of Session or by any other Court by which such offence is shown in the eighth column of the second Schedule to be triable.

Act X, 1872, s. 8, para. 1.

Offences under other laws.

29. Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code: Provided that

(*a*) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years;

(*b*) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years; and

(*c*) no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.

Act X, 1872, s. 30.

Offences not punishable with death.

30. In the territories respectively administered by the Lieutenant-Governor of the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg and Assam, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate with power to try as a Magistrate all offences not punishable with death.

B.—Sentences which may be passed by Courts of various Classes.

Sentence which High Courts or Sessions Judges may pass.

31. A High Court may pass any sentence authorized by law.

Act X, 1872, ss. 15, para. 2, 17.

A Sessions Judge, Additional Sessions Judge or Joint Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by such Judge shall be subject to confirmation by the High Court.

Act X, 1872, s. 18.

An Assistant Sessions Judge may pass any sentence authorized by law except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding three years passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge.

Act X, 1872, s. 20.

Sentences which Magistrates may pass.

32. The Courts of Magistrates may pass the following sentences, namely:—

(*a*) Courts of Presidency Magistrates and of Magistrates of the first class:	Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law; Act IV, 1877, s. 11. Fine not exceeding one thousand rupees; Whipping.

(*b*) Courts of Magistrates of the second class:	Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law; Fine not exceeding two hundred rupees; Whipping.
(*c*) Courts of Magistrates of the third class.	Imprisonment for a term not exceeding one month; Fine not exceeding fifty rupees.

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

No Court of any Magistrate of the second class shall pass a sentence of whipping unless he is specially empowered in this behalf by the Local Government.

X, 1872, 20, Expl., 209, para. I. L. R., 1 nd., 77.

33. The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law in case of such default: Provided that the term is not in excess of the Magistrate's powers under this Code:

Power of Magistrates to sentence to imprisonment in default of fine.

X, 1872, 209, para. proviso. para. 1 that section Act 1868. V, 1877, 2, omitted paras. 3.

Provided also that in no case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

Proviso as to certain cases.

. 1872, Expl.

The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

. 1872,

34. The Court of a District Magistrate specially empowered under section 30 may pass any sentence of imprisonment for a term not exceeding seven years, including such solitary confinement as is authorized by law, or of fine, or of whipping, or of any combination of these punishments authorized by law.

Higher powers of certain District Magistrates.

ra., s.

But any sentence of imprisonment for a term exceeding three years passed by any such Court shall be subject to the confirmation of the Sessions Judge.

1872, 1875, 1877,

35. When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

Sentence in cases of conviction of several offences at one trial.

It shall not be necessary for the Court, by reason only of the aggregate punishments for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that in no case shall such person be sentenced to punishment for a longer period than fourteen years:

Maximum term of punishment.

Provided also that, if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishments shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of confirmation or appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence. I. L. R., 1 Bom., 223.

C.—Ordinary and Additional Powers.

36. All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third classes have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers." Act X, 1872, ss. 22, 24, 26, 29, 30.

Ordinary powers of Magistrates.

37. In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate. Act X, 1872, ss. 23, 25, 27, 29.

Additional powers conferrible on Magistrates.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government.

District Magistrates' investing power to be subject to control.

D.—Conferment, Continuance and Cancellation of Powers.

39. In conferring powers under this Code, the Local Government may by order empower persons specially by name, or classes of officials generally by their official titles. Act X, 1872, s. 43.

Mode of conferring powers.

Every such order shall take effect from the date on which it is communicated to the person so empowered.

40. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to an Act X, 1872 s. 56.

Continuance of powers of officers transferred.

equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

I. L. R., Cal., 111.

Act X, 1872, s. 54.

Powers may be cancelled.

41. The Local Government may withdraw any powers conferred under this Code on any person by it or by any officer subordinate to it.

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

Of Aid and Information to the Magistrates, the Police and persons making arrests.

Act X, 1872, s. 91. Act IV, 1877, s. 247.

Public when to assist Magistrates and Police.

42. Every person is bound to assist a Magistrate or Police-officer reasonably demanding his aid, whether within or without the Presidency-towns,

(*a*) in the taking of any other person whom such Magistrate or Police-officer is authorized to arrest;

(*b*) in the prevention of a breach of the peace, or of any injury attempted to be committed to any railway, canal, telegraph or public property; or

(*c*) in the suppression of a riot or affray.

Act X, 1872, s. 163.

Aid to person other than Police-officer, executing warrant.

43. When a warrant is directed to a person other than a Police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Act X, 1872, s. 89. Act IV, 1877, s. 246.

Public to give information of certain offences.

44. Every person, whether within or without the Presidency-towns, aware of the commission of or of the intention of any other person to commit any offence punishable under the following sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 45β, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or Police-officer of such commission or intention.

Act X, 1872, s. 90.

Village-headmen, landholders and others bound to report certain matters.

45. Every village-headman, village-watchman, village-police-officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest Police-station, whichever is the nearer, any information which he may obtain respecting—

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, watchman or Police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(*b*) the resort to any place within, or the passage through, such village, of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;

(*c*) the commission of or intention to commit any non-bailable offence in or near such village;

(*d*) the occurrence therein of any sudden or unnatural death or of any death under suspicious circumstances.

Explanation.—In this section "village" includes village-lands.

CHAPTER V.

Of Arrest, Escape and Retaking.

A.—Arrest generally.

Act X, s. 177

Arrest how made.

46. In making an arrest, the Police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Act X, 178, words atte evade

Resisting endeavour to arrest.

If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such Police-officer or other person may use all means necessary to effect the arrest.

Alison's Cr. law Mayne s. 106.

Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death.

Act X ss. 9

Search of place entered by person sought to be arrested.

47. If any person acting under a warrant of arrest, or any Police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such Police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Act X s. 1

Procedure where ingress not obtainable.

48. If ingress to such place cannot be obtained under section 47, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue but cannot be obtained without affording the person to

arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless, before the expiration of that time, his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

Act X, 1872, s. 103.

Pursuit of offenders into other jurisdictions.

58. A Police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this chapter, pursue such person into any place in British India.

Act X, 1872, s. 105.

Arrest by private persons.

59. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence, or who has been proclaimed as an offender; and shall, without unnecessary delay, make over any person so arrested to a Police-officer; or, in the absence of a Police-officer, take such person to the nearest Police-station.

Act X, 1872, s. 107. N. Y. Crim. Pro. Code, 184.

Procedure on such arrest.

If there is reason to believe that such person comes under the provisions of section 54, a Police-officer shall re-arrest him.

If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a Police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no reason to believe that he has committed any offence, he shall be at once discharged.

Act X, 1872, s. 101.

Person arrested to be taken before Magistrate or officer in charge of Police-station.

60. A Police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station.

Act X, 1872, s. 124, para. 1

Person arrested not to be detained more than 24 hours.

61. No Police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Act X, 1872, s. 132, para. 1.

Police to report apprehensions.

62. Officers in charge of Police-stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Act X, 1872, s. 132, para. 2. Act IV, 1877, s. 70, para. 1.

Discharge of person apprehended.

63. No person who has been arrested by a Police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

Act X, 1872, s. 108. Act IV, 1877, s. 15.

Offence committed in Magistrate's presence.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Act X, 1872, s. 166, para. Act IV, 1877, s. 62.

Arrest by or in presence of Magistrate.

65. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Act XXV, 1861, s. 11 N. Y. Cr. Pro. Co s. 186.

Power, on escape, to pursue and retake.

66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue, and arrest him in any place in British India.

Act XXV, 1861, s. 1 N. Y. Cr. Pro. Co s. 186.

Provisions of sections 47, 48 and 49 to apply to cases under section 66.

67. The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a Police-officer having authority to arrest.

CHAPTER VI.

Of Processes to compel Appearance.

A.—Summons.

Act X, s. 152. Act IV, s. 47.

Form of summons.

68. Every summons issued by a Court under this Code shall be in writing in duplicate signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may from time to time by rule direct.

Act X, 1 s. 153, s

Summons by whom served.

Such summons shall be served by a Police-officer; or, subject to such rules consistent with this Code as the Local Government may prescribe in this behalf, by an officer of the Court issuing it.

This section applies to the police in the towns of Calcutta and Bombay.

Act X, 1 154. Act IV s. 48

Summons how served.

69. The summons shall if practicable be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Signature of receipt for summons.

Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Act I s. 7 Act IV s. 4

Service when person summoned cannot be found.

70. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a Presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Act I s. 1

Procedure when receipt cannot be obtained.

71. If the signature mentioned in sections 69 and 70 cannot by the exercise of due diligence be obtained, the serving officer shall affix one of the duplicates of the summons to some

conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Act X, 1872, s. 158, proviso.

Service on servant of Government or of Railway Company.

72. Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court with the endorsement required by that section.

Act XXIII, 1840, s. 1. Act IV, 1877, s. 50.

Service of summons outside local limits.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Act IV, 1877, s. 51.

Proof of service in such cases, and when serving officer not present.

74. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

B.—Warrant of Arrest.

Act X, 1872, s. 159, amended. Act IV, 1877, s. 56, which does not require the seal. But see 9, Bom., 157.

Form of warrant of arrest.

75. Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or, in the case of a Bench of Magistrates, by any member of such Bench, and shall bear the seal of the Court.

Continuance of warrant of arrest.

Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Act X, 1872, s. 160. Act IV, 1877, s. 58.

Court may direct security to be taken.

76. Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

The endorsement shall state (*a*) the number of sureties, (*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (*c*) the time at which he is to attend before the Court.

Recognizance to be forwarded.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Act X, 1872, s. 161. Act IV, 1877, s. 56.

Warrants to whom directed.

77. A warrant of arrest shall ordinarily be directed to one or more Police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no Police-officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

Act X, 1872, s. 164. Act IV, 1877, s. 59.

Warrant to several persons.

When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Act X, 1872, s. 162.

Warrant may be directed to landholders, &c.

78. A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest Police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

Act X, 1872, s. 165. Act IV, 1877, s. 60.

Warrant directed to Police-officer.

79. A warrant directed to any Police-officer may also be executed by any other Police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Act X, 1872, s. 176.

Notification of substance of warrant.

80. The Police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested and, if so required, shall show him the warrant.

Act X, 1872, s. 183.

Person arrested to be brought before Court without delay.

81. The Police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

Processes to compel appearance.

Act X. 1872, s. 167. Act IV, 1877, s. 63.

Where warrant may be executed.

82. A warrant of arrest may be executed at any place in British India.

Act X, 1872, ss. 168, paras. 1 & 2, 170, first part. Act IV, 1877, s. 64.

Warrant forwarded to Magistrate for execution outside jurisdiction.

83. When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a Police-officer, forward the same by post or otherwise to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and, if practicable, cause it to be executed within the local limits of his jurisdiction.

Act X, 1872, ss. 168, paras. 1 & 3, 170, first part. Act IV, 1877, s. 64, paras. 5, 6, 7.

Warrant directed to Police-officer for execution outside jurisdiction.

84. When a warrant directed to a Police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a Police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

Such Magistrate or Police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the Police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall if so required assist such officer in executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or Police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the Police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

This section applies to the Police in the towns of Calcutta and Bombay.

Act X. 1872, s 169. Act IV. 1877, s. 66, para. 1.

Procedure on arrest of person against whom warrant issued.

85. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the Magistrate or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner.

Act X, 1872, s. 170. Act IV, 1877, s. 65, para. 2.

Procedure by Magistrate before whom person arrested is brought.

86. Such Magistrate or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: Provided that if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate or Commissioner, or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate or Commissioner shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

Nothing in this section shall be deemed to prevent a Police-officer from taking security under section 76.

C.—Proclamation and Attachment.

Act X, ss. 171, para. 1. Act X, s. 82. Act IV, ss. 67, 10 Ben. A 18.

Proclamation for person absconding.

87. If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

The proclamation shall be published as follows:—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides, or to some conspicuous place of such town or village; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the Court-house.

A statement by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

New as to of publication.

Act X, 18 ss. 172, 2 paras. 2 3. Act IV, 18 ss. 68, 18

Attachment of property of person absconding.

88. The Court may, after issuing a proclamation under section 87, order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person.

Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such district, when endorsed by the District Magistrate within whose district such property is situate.

If the property ordered to be attached be debts or other moveable property, the attachment under this section shall be made—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(*d*) by all or any two of such methods, as the Court thinks fit.

If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases—

(*e*) by taking possession; or

(*f*) by the appointment of a receiver; or

(*g*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(*h*) by all or any two of such methods, as the Court thinks fit.

The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure.

If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

Act X, 1872, ss. 178, 354. Act X, 1875, s. 83. Act IV, 1877, ss. 60, 438.

Restoration of attached property.

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government under the last paragraph of section 88 appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

D.—Other rules regarding processes.

Act X, 1872, ss. [illegible], para. 2, 156, 352, 355, 491, para. 1. Act X, 1875, ss. 81, 84. Act IV, 1877, ss. 34, 36, 73, 135, 136, 217.

Issue of warrant in lieu of or in addition to summons.

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant for his arrest—

(*a*) if either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(*b*) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Act IV, 1877, s. 140.

Power to take bond for appearance.

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond with or without sureties for his appearance in such Court.

Act X, 1872, s. 208, para. 2. Act IV, 1877, s. 124, para. 2.

Arrest on breach of bond for appearance.

92. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

Provisions in this chapter generally applicable to summonses and warrants of arrest.

93. The provisions contained in this chapter relating to a summons and warrant and their issue, service and execution shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

Act X, 1872, ss. 158, para. 1, 185. Act IV, 1877 s. 52.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

Summons to produce document or other thing.

94. Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a Police-station, considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

Act X, 1872, s. 385. Act X, 1875, s. 83. Act IV, 1877, s. 144.

Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he cause such document or thing to be produced instead of attending personally to produce the same.

Act X, 1877, s. 164.

Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, post-card, telegram or other document in the custody of the Postal or Telegraph Department.

New.

Procedure as to letters and telegrams.

95. If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph Department, as the case may be, to deliver such document to such person as such Magistrate or Court directs.

Act X, 1872, s. 360, last sentence. Act IV, 1877, s. 140.

If any such document is, in the opinion of any other Magistrate or of any Commissioner of Police, or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

B.—Search-warrants.

When search-warrant may be issued.

96. Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95,

Act X, 1872, s. 336. Act X, 1875, s. 87. Act IV, 1877, s. 149.

paragraph one, has been or might be addressed will not or would not produce the document or other thing as directed in such summons,

or where such document or other thing is not known to the Court to be in the possession of any person,

Act X, 1872, s. 368, para. 1. Act IV, 1877, s. 160. or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

Act X, 1872, s. 369, cl. 1. Nothing herein contained shall authorize any Magistrate, other than a District Magistrate or Chief Presidency Magistrate, to grant a warrant to search for a document in the custody of the Postal or Telegraph authorities.

Act X, 1872, s. 398, para. 2. General warrant should not be the rule.

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

Power to restrict warrant.

Act X, 1872, s. 377. Act IV, 1877, s. 160.

98. If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

Search of house suspected to contain stolen property, forged documents, &c.

or for the deposit or sale or manufacture of forged documents, false seals, or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals, or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

he may by his warrant authorize any Police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required, such place, and

(*b*) to search the same in manner specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also any such instruments and materials as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale, or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or for forging.

Act X, 1872, ss. 373, para. 2, 374.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

Disposal of things found in search beyond jurisdiction.

C.—Discovery of persons wrongfully confined.

100. If any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person if found shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

Search for persons wrongfully confined.

D.—General Provisions relating to searches.

Act X, 1872, ss. 370, 372, para. 1, 376. Act IV, 1877, s. 161.

101. The provisions of sections 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98, or section 100.

Direction, &c., of search-warrants.

Act X, 1872, s. 382. Act IV, 1877, s. 162.

102. Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Persons in charge of closed place to allow search.

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

Act X, 1872, ss. 383, 384. Act IV, 1877, ss. 163, 164.

103. Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be

Act X, 1872, s. 385. Act IV, 1877, s. 165.

Search to be made in presence of witnesses.

searched is situate to attend and witness the search.

The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses, but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

Occupant of place searched may attend.

The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

E.—Miscellaneous.

X, 1872, s. 517, first clause.

Power to impound document, &c., produced.

104. Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.

X, 1872, s. 88. IV, 1877, s. 147. X, 1872, s. 378, para. 3.

Magistrate may direct search in his presence.

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

X, 1872, s. 189, para. 4, cl. (a), clause 1. X, 1875, s. 140. IV, 1877, s. 208. Bond becomes void when conviction set aside, 5 W. R., 1875, p. 376.

Security for keeping the peace on conviction.

106. Whenever any person accused of rioting, assault or other breach of the peace, or of abetting the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation by threatening injury to person or property, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

X, 1872, ss. 490, 493, para. 1. s. 496. X, 1875, s. 141. IV, 1877, s. 209.

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period not exceeding three years as it thinks fit to fix.

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.

X, 1872, ss. 491, 502, first para. IV, 1877, ss. 215, 231.

Security for keeping the peace in other cases.

107. Whenever a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class receives information that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

Act X, 1872, s. 494, proviso.

Procedure of Magistrate, &c., not empowered to act under section 107.

108. When any Magistrate not empowered to proceed under section 107, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case under section 107.

A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the enquiry hereinafter prescribed.

Act X, 1872, ss. 504, paras. 1 and 4, 515, para. 2. Act IV, 1877, ss. 212, 231.

Security for good behaviour from vagrants and suspected persons.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information—

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

Act X, 1872, ss. 505, 508. Act IV, 1877, ss. 213, 214, 231. 1 O'Kin. 271

Security for good behaviour from habitual offenders.

110. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction is an habitual robber, housebreaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or that he habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding three years as the Magistrate thinks fit to fix.

Act X, 1872, s. 517.
Act IV, 1877, s. 232.

111. The provisions of sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

Proviso as to European vagrants.

Act X, 1872, ss. 492, 509, para. 1, 515, para. 1.
Act IV, 1877, ss. 216, para. 1, 222.

112. When a Magistrate acting under section 107, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

Order to be made.

Act X, 1872, s. 492, Expl.
Act IV, 1877, s. 216, para. 2.

113. If the person in respect of whom such order is made is present in court, it shall be read over to him or, if he so desires, the substance thereof shall be explained to him.

Procedure in respect of person present in Court.

114. If such person is not present in court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him, before the Court:

Summons or warrant in case of person not so present.

Act X, 1872, ss. 494, 515, para. 1.
Act IV, 1877, s. 217, proviso. In bad livelihood cases police can arrest without warrant.

Provided that, whenever it appears to such Magistrate, upon the report of a Police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Copy of order under section 112 to accompany summons or warrant.

Act X, 1872, s. 495.
Act IV, 1877, s. 218.

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to shew cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Power to dispense with personal attendance.

New. I. O'Kin. 130.
*See Act X, 1872, s. 491, Expln.

117. When an order under section 112 has been read or explained under section 113, to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to enquire into the truth of the information upon which he has acted, and to take such further evidence as may appear necessary.

Inquiry as to truth of information.

Act X, 1872, s. 515, para. 3.

Such enquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials in summons-cases; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases, except that no charge need be framed.

For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

Act X, 1872, s. 497.
Act IV, 1877, s. 220.

118. If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond with or without sureties, the Magistrate shall make an order accordingly:

Order to give security.

Provided—

Firstly—that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112:

Act X, 1872, s. 493, para. 1.
1 O'Kin. 2

Secondly—that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive:

Thirdly—that when the person in respect of whom the enquiry is made is a minor, the bond shall be executed only by his sureties.

Act X, 1872, s. 497.
Act IV, 1877, s. 220.

119. If, on an enquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Discharge of person informed against.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

Act X, 1872, ss. 489, 493, para. 2, 504, para. 2.
Act IV, 1877, ss. 219, 220.
I. L. R., 1 Bom. 606, n.

120. If any person in respect of whom an order requiring security is made under section 106 or section 118 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

Commencement of period for which security is required.

In other cases such period shall commence on the date of such order.

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Contents of bond.

Act X, 1872, s. 502, para. 6.
Act IV, 1877, s. 223.

122. A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person.

Power to reject sureties.

Act X, 1872, s. 516.

123. If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on

Imprisonment in default of security.

Act X, 1872, ss. 489, 493, para. 1, last sentence, 498, last sentence, 498, para. 3.
Act IV, 1877, s. 223.

which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison, until such period expires or until within such period he gives the security to the Court or Magistrate which or who made the order requiring it, or to the officer in charge of the jail in which the person so ordered is detained.

Act X, 1872, ss. 507 508. Act IV, 1877, s. 221.

Proceedings when to be laid before High Court or Court of Session.

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Act X, 1872, s. 499, para. 3.

Kind of imprisonment.

Imprisonment for failure to give security for keeping the peace shall be simple.

Act X, 1872, s. 510, para. 3.

Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

Act X, 1872, ss. 500, 511. Act IV, 1877, s. 225.

Power to release persons imprisoned for failing to give security.

124. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

Act X, 1873, s. 512.

Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be released without such hazard, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

Act X, 1872, s. 500

Power of District Magistrate to cancel any bond for keeping the peace.

125. The District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace executed under this chapter by order of any Court in his District not superior to his Court.

Act X, 1872, ss. 500, 513. Act IV, 1877, s. 226.

Discharge of sureties.

126. Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this chapter within the local limits of his jurisdiction.

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

CHAPTER IX.

UNLAWFUL ASSEMBLIES.

Act X, 1872, s. 480. Act XI, 1874, s. 43. Penal Code, ss. 145, 151.

Assembly to disperse on command of Magistrate or Police-officer.

127. Any Magistrate or officer in charge of a Police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

This section applies to the Police in the towns of Calcutta and Bombay.

Act X, 1872, s. 481.

Use of civil force to disperse.

128. If, upon being so commanded, any such assembly does not disperse, or if without being so commanded it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a Police-station, whether within or without the Presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a Volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

Volunteers added.

Act X, 1872, s. 482.

Use of military force.

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Act X, 1872, s. 484, omitting volunteers.

Duty of officer commanding troops required by Magistrate to disperse assembly.

130. When a Magistrate determines to disperse any such assembly by military force, he may require any Commissioned or Non-commissioned officer in command of any soldiers in Her Majesty's Army or of any Volunteers enrolled under the Indian Volunteers Act, 1869 to disperse such assembly by such force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly, or that they may be punished according to law.

Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

Act X, 1872, s. 487.

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly, or that they may be punished according to law; but, if while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Power of commissioned Military officers to disperse assembly.

Act X, 1872, s. 488.

132. No prosecution against any Magistrate, Military officer, Police-officer, soldier or volunteer for any act purporting to be done under this chapter shall be instituted in any Criminal Court, except with the sanction of the Governor General in Council; and

Protection against prosecution for acts done under this chapter.

Act X, 1872, ss. 483, 485, 486.

(*a*) no Magistrate or Police-officer acting under this chapter in good faith,

(*b*) no officer acting under section 131 in good faith,

(*c*) no person doing any act in good faith in compliance with a requisition under section 128 or section 130, and

(*d*) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey,

shall be deemed to have thereby committed an offence.

CHAPTER X.

PUBLIC NUISANCES.

Act X, 1872, s. 521, substituting "way" for "thoroughfare."

133. Whenever a District Magistrate, a Sub-divisional Magistrate or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a report or other information and on taking such evidence (if any) as he thinks fit,

Conditional order for removal of nuisance.

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

"Combustible" omitted.

that any building is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence its removal, repair or support is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,—

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, substance, tank, well or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to suppress or remove such trade or occupation; or

to remove such goods or merchandise; or

to prevent or stop the construction of such building; or

to remove, repair or support it; or

to alter the disposal of such substance; or

to fence such tank, well or excavation, as the case may be; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

EXPLANATION.—A "public place" includes also property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

Act X, 1872, s. 522.

134. The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

Service or notification of order.

If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Act X, 1872, s. 523, para. 1.

135. The person against whom such order is made shall—

Person to whom order is addressed to obey,

(*a*) perform, within the time specified in the order, the act directed thereby; or

or show cause or claim jury.

(*b*) appear in accordance with such order and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

Act X, 1872, s. 525.

136. If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code; and the order shall be made absolute.

Consequence of his failing to do so.

Act X, 1872, ss. 525, 527. Act XI, 1874, s. 45.

137. If he appears and shows cause against the order, the Magistrate shall take evidence in the matter.

Procedure where he appears to show cause.

O'Kin. 486.

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

If the Magistrate is not so satisfied, the order shall be made absolute.

Act X, 1872, s. 523, para. 2.

138. On receiving an application under section 135 to appoint a jury, the Magistrate shall—

Procedure where he claims jury.

Cal. 509.

(*a*) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

Act X, 1872, s. 524, para. 1.

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

Act X, 1872, s. 523, para.

(*c*) fix a time within which they are to return their verdict.

Act X, 1872, s. 523, para. 526, para.

139. If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

Procedure where jury finds Magistrate's order to be reasonable.

In other cases, no further proceedings shall be taken.

Act X, 1872, s. 526, para.

140. When an order has been made absolute under section 136, section 137, or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

Procedure on order being made absolute.

Act X, 1872, ss. 525, 526, para. 2.

If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

Consequences of disobedience to order.

No suit shall lie in respect of anything done in good faith under this section.

141. If the applicant by neglect or otherwise prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

Act X, 1872, s. 525, para. 2. Act X, 1872, s. 523, para. 4.

Procedure on failure to appoint jury or omission to return verdict.

142. If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury.

Act X, 1872, s. 528.

Injunction pending inquiry.

In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

143. A District Magistrate or Sub-divisional Magistrate or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law.

Act X, 1872, s. 519. Penal Code, s. 291.

Magistrate may prohibit repetition or continuance of public nuisances.

CHAPTER XI.

Temporary Orders in Urgent Cases of Nuisance.

144. In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

Act X, 1872, s. 518, with Expl. I. 1 O'Kin. 58.

Power to issue order absolute at once in urgent cases of nuisance.

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession, or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, or danger to human life, health or safety, or a riot or an affray.

Act X, 1872, s. 518. 1 Ben. Ap. Cr. 20.

An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice

Act X, 1872, s. 518, Exp. 2.

upon the person against whom the order is directed, be passed *ex parte*.

Act X, 1872, s. 518, Expl. III.

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

As to disobedience to such orders, see Penal Code, s. 188.

Act X, 1872, s. 518, Expl. IV.

Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office.

5 Cal. 7.
4 Cal. 410.

No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government by notification in the official Gazette otherwise directs.

CHAPTER XII.

Disputes as to Immoveable Property.

Act X, 1872, s. 530.
3 Calc. 552.

145. Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any tangible immoveable property, or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

Procedure where dispute concerning land, &c., is likely to cause breach of peace.

I. L. R., 3 Cal. 320.

The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties is then in such possession of the said subject.

Inquiry as to possession.

1 O'Kin. 126.
2 O'Kin. 67, 264.
See 6 Calc. 206.

If the Magistrate decides that one of the parties is then in such possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.

Party in possession to be continued until legally evicted.

Nothing in this section shall preclude any party so required to attend from showing that no such dispute as aforesaid exists or has existed, and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed.

Act X, 1872, s. 531.
1 O'Kin. 86.

146. If the Magistrate decides that none of the parties is then in such possession, or is unable to satisfy himself as to which of them is then in such possession, of the subject of dispute, he may attach it until a competent Civil Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

Power to attach subject of dispute.

147. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right to do or prevent the doing of anything in or upon any tangible immoveable property situate within the local limits of his jurisdiction, he may inquire into the matter; and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done or claiming that such thing may be done, obtains the decision of a competent Civil Court, adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be:

Disputes concerning easements, &c.

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exerciseable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exerciseable only at particular seasons, unless the right has been exercised during the season next before such institution.

Act X, 1872, s. 533.

148. Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

Local inquiry.

The report of the person so deputed may be read as evidence in the case.

When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees or both, the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

CHAPTER XIII.

Preventive Action of the Police.

Act X, 1872, s. 95.

149. Every Police-officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any cognizable offence.

Police to prevent cognizable offences.

Act X, 1872, s. 96.

150. Every Police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the Police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Information of design to commit such offences.

Act X, 1872, s. 97.

151. A Police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Arrest to prevent such offences.

Act X, 1872, s. 98, para. 1.

152. A Police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public land-mark, or buoy or other mark used for navigation.

Prevention of injury to public property.

Act X, 1872, s. 381.

153. Any officer in charge of a Police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

Inspection of weights and measures.

If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

PART V.

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

X, 1872, 112. Penal e, s. 180.

154. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a Police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Information in cognizable cases.

X, 1872, 113.

155. When information is given to an officer in charge of a Police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

Information in non-cognizable cases.

X, 1872, 110.

No Police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

Investigation into non-cognizable cases.

Any Police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a Police station may exercise in a cognizable case.

X, 1872, 109, 114, n. 2; v. e, s. 183.

156. Any officer in charge of a Police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to enquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

Investigation into cognizable cases.

Act X, 1872, s. 114, last para.

No proceeding of a Police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

Act X, 1872, s. 114, para. 1.

157. If, from information received or otherwise, an officer in charge of a Police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender:

Procedure where cognizable offence suspected.

See Nelson, 109.

Provided as follows:—

Act X, 1872, s. 116.

(*a*) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot:

Where local investigation dispensed with.

Act X, 1872, s. 117, para. 1.

(*b*) if it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Where Police-officer in charge sees no sufficient ground for investigation.

In each of the cases mentioned in clauses (*a*) and (*b*) the officer in charge of the Police-station shall state in his said report his reasons for not fully complying with the requirements of the first paragraph of this section.

Act X, 1872, s. 117, para. 3.

158. Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of Police as the Local Government, by general or special order, appoints in that behalf.

Reports under section 157 how submitted.

Such superior officer may give such instructions to the officer in charge of the Police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

Act X, 1872, s. 115.

159. Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold an investigation or preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Power to hold investigation or preliminary inquiry.

Act X, 1872, s. 118.

160. Any Police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or

Police-officer's power to require attendance of witnesses.

any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Act X, 1872, ss. 118, 119, paras. 1 and 2, 121.

Examination of witnesses by police.

161. Any Police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Act X, 1872, ss. 119, para. 3, 121. 11 Bom. H. C. Rep., 120.

Statements to police not to be signed or admitted in evidence.

162. No statement, other than a dying declaration, made by any person to a Police-officer in the course of an investigation under this chapter shall, if reduced into writing, be signed by the person making it, or be used as evidence against the accused.

Nothing in this section shall be deemed to affect the provisions of section 27 of the Indian Evidence Act, 1872.

Act X, 1872, ss. 120, 184. Cf. Act I, 1872, s. 24. See 6. Calc. 293-297.

No inducement to be offered.

163. No Police-officer or person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

Nelson, 113.

But no Police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this chapter any statement which he may be disposed to make of his own free will.

Act X, 1872, s. 122. Act IV, 1873, s. 16. See 6 Cal. 293-297.

Power to record statements and confessions.

164. Any Magistrate not being a Police-officer may record any statement or confession made to him in the course of an investigation under this chapter, or at any time afterwards before the commencement of the inquiry or trial.

I. L. R., 1 Bom. 219.

Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is in his opinion best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and when he records any confession he shall make a memorandum at the foot of such record to the following effect:—

"I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

"(*Signed*) A. B.,
"*Magistrate.*"

Act X, 1872, s. 379.

Search by Police-officer.

165. Whenever an officer in charge of a Police-station, or a Police-officer making an investigation, considers that the production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or other thing as directed in the summons or order, or when such document or other thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or other thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section.

Act X, 1872, s. 380.

When officer in charge of Police-station may require another to issue search-warrant.

166. An officer in charge of a Police-station may require an officer in charge of another Police-station, whether in the same or a different District, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

Act X, 1872, s. 124, paras. 2, 3 and 4.

Procedure when investigation cannot be completed in twenty-four hours.

167. Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation is well-founded, the officer in charge of the Police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

The Magistrate to whom an accused person is forwarded under this section may, whether he has

or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Act X, 1872, s. 123, para 2.

168. When any subordinate Police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the Police-station.

Report of investigation by subordinate Police-officer.

Act X, 1872, s. 126.

169. If, upon an investigation under this chapter, it appears to the officer in charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial.

Release of accused when evidence deficient.

Act X, 1872, s. 126, para. 12, para. 130, paras. 3 to 4.

170. If, upon an investigation under this chapter, it appears to the officer in charge of the Police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report, and to try the accused or commit him for trial; or if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

Case to be sent to Magistrate when evidence is sufficient.

When the officer in charge of a Police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant, if any, and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Sub-divisional Magistrate be mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference be given to such complainant or persons.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Act X, 1872, s. 130, last para.

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a Police-officer,

Complainants and witnesses not to be required to accompany Police-officer.

Act X, 1872, s. 131, para. 1.

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Complainants and witnesses not to be subjected to restraint.

Act X, 1872, s. 131, para. 3.

Provided that, if any complainant or witness refuses to attend or to execute the bond as directed in section 170, the officer in charge of the Police-station may forward him under custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

Recusant complainant or witness may be forwarded in custody.

Act X, 1872, s. 126.

172. Every Police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Diary of proceedings in investigation.

Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries not as evidence in the case but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police-officer, the provisions of the Indian Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

Act X, 1872, ss. 125, 127, paras. 1 & 2.

173. Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the Police-station shall forward to a Magistrate empowered to take cognizance of the offence on a police report a report in the form prescribed by the Local Government, setting forth the names of

Report of Police-officer.

the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

Where a superior officer of police has been appointed under section 158, the report shall be submitted through him, and he may, pending the orders of the Magistrate, direct the officer in charge of the Police-station to make further investigation.

Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

Act X. 1872, s. 133.

174. Every officer in charge of a Police-station, on receiving information that a person—

Police to inquire and report on suicide, &c.

(*a*) has committed suicide, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any) such marks appear to have been inflicted.

This power may be exercised so as to save Military Courts of Inquest.

The report shall be signed by such Police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When there is any doubt regarding the cause of death, or when for any other reason the Police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the Head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

The following Magistrates are empowered to hold inquests; namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

175. An officer in charge of a Police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

Act X, 1872, s. 134.

Power to summon persons.

Penal Code, ss. 174, 179.

If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the Police-officer to attend a Magistrate's Court.

176. When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and in any other case mentioned in section 174, clauses (*a*), (*b*) and (*c*) any Magistrate so empowered may, hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the Police-officer; and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed, according to the circumstances of the case.

Act X, 1872, s. 135.

Inquiry by Magistrate into cause of death.

Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

New. Cf. Act IV, 1871, s. 11.

Power to disinter corpse.

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

Of the Jurisdiction of the Criminal Courts in Inquiries and Trials.

A.—Place of Inquiry or Trial.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Act X, 1872, s. 63, para. 1. Act IV, 1877, s. 18.

Ordinary place of inquiry and trial.

178. Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any Sessions Division:

Act X, 1872, s. 63, para. 2.

Power to order cases to be tried in different Sessions Division.

Act XI, 1874, s. 9.

Act X, 1872, s. 65.

Act IV, 1877, s. 19.

Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, or under this Code, section 526.

Accused triable in district where act is done, or where consequence ensues.

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations.

(*a*) A is wounded within the local limits of the jurisdiction of Court X and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into and tried either by X or Z.

(*b*) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y or Court Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into and tried by X, Y or Z.

(*c*) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into and tried either by X or Y.

Act X, 1872, s. 66, omitting illustration (*d*).

Act IV, 1877, s. 20.

Place of trial where act is offence by reason of relation to other offence.

180. When an act is an offence by reason of its relation to any other act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into and tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations.

(*a*) A charge of abetment may be inquired into and tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(*b*) A charge of receiving or retaining stolen goods may be inquired into and tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(*c*) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into and tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

Act X, 1872, s. 67, Illustration (*c*).

Act IV, 1877, s. 22.

Being a thug or belonging to a gang of dacoits, escape from custody, &c.

181. The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into and tried by a Court within the local limits of whose jurisdiction the person charged is.

Act X, 1872, s. 67, Illustration (*c*).

Criminal misappropriation and criminal breach of trust.

The offence of criminal misappropriation or of criminal breach of trust may be inquired into and tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person, or the offence was committed.

Stealing.

The offence of stealing anything may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief or by any person who receives or retains the same knowing or having reason to believe it to be stolen.

Act X, 1872, s. 67 Illustration (*f*). I. L. R. 1 Mad. 17.

Place of inquiry and trial where scene of offence is uncertain,

182. When it is uncertain in which of several local areas an offence was committed, or

Act XVIII, 1862, ss. 29-35.

Act X, 1872, s. 67, omitting the illustrations.

Act IV, 1877, s. 21.

or not in one district only;

where an offence is committed partly in one local area and partly in another, or

or where offence is continuing,

where an offence is a continuing one, and continues to be committed in more local areas than one, or

or consists of several acts.

where it consists of several acts done in different local areas,

it may be inquired into and tried by a Court having jurisdiction over any of such local areas.

Act X, 1872, s. 67, Illustration (*e*). 1 Mad., H. C. Rep. 193.

Offence committed on a journey.

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into and tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

Act IV, 1877, s. 239. Act I. II, 1869, repealed.

Offences against Railway, Telegraph, Post-office and Arms Acts.

184. All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-office, or Arms and Ammunition may be inquired into and tried in a Presidency-town, whether the offence is stated to have been committed within such town or not: Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

Act X, 1872, s. 69. Act IV, 1877, s. 23.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

185. Whenever any doubt arises as to the Court by which any offence should under the preceding provisions of this chapter be inquired into or tried, the High Court within the local limits of whose appellate criminal jurisdiction the offender actually is may decide by which Court the offence shall be inquired into or tried.

In British Burma, when the offender is a European British subject, the Recorder of Rangoon, and in all other cases the Judicial Commissioner, shall for the purposes of this section be deemed to be the High Court.

Act X, 1872, s. 157. Act IV, 1877, s. 54.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

186. When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under

some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

Act X. 1872, s. 174. Act IV. 1877, s. 55. Act XXIII, 1840, s. 7.

Magistrate's procedure on arrest.

When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

187. If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

Act X. 1872, s. 175.

Procedure where warrant issued by Subordinate Magistrate.

If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Act XXI, 1879, s. 9.

Liability of British subjects for offences committed out of British India.

188. When a European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India:

Political Agent to certify fitness of inquiry into charge.

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

Act XXI, 1879, s. 10.

Power to direct copies of depositions and exhibits to be received in evidence.

190. In sections 188 and 189 the expression "Political Agent" means and includes—

Act XXI, 1879, s. 3.

"Political Agent" defined.

(*a*) the principal officer representing the British Indian Government in any territory beyond the limits of British India:

(*b*) any officer in British India appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under the Foreign Jurisdiction and Extradition Act, 1879, for any territory not forming part of British India.

B.—Conditions requisite for Initiation of Proceedings.

191. Except as hereinafter provided, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

Act X, 1872, ss. 140, cl. (*a*), (*b*) and (*c*), 142 para. 1. Act IV, 1877, ss. 25, 26.

Cognizance of offences by Magistrates.

(*a*) upon receiving a complaint of facts which constitute such offence;

(*b*) upon a police report of such facts;

(*c*) upon information received from any person other than a Police-officer, or upon his own knowledge or suspicion that such offence has been committed.

Act X, 1872, ss. 140, cl. (*d*), 142 para. 1. Act IV, 1877, s. 46.

The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under clause (*a*) or clause (*b*) of offences for which he may try or commit for trial.

Act X, 1872, ss. 23, 25, 26.

The Local Government may empower any Magistrate of the first or second class to take cognizance under clause (*c*) of offences for which he may try or commit for trial.

Act X, 1872, ss. 25, 27.

192. Any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

Act X, 1872, ss. 44, cl. 1, 141, para. 2. Act XI, 1874, s. 6.

Transfer of cases by Magistrates.

Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case, to transfer it for inquiry or trial to any other specified Magistrate in his District who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

Act X, 1872, s. 141, para. 2.

193. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

Cognizance of offences by Courts of Session.

Act X, 1872, s. 231. Act XI, 1874, s. 18.

Additional Sessions Judges and Joint Sessions Judges shall try such cases only as the Local Government by general or special order directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

Act X, 1872, s. 17.

Cases to be tried by Additional and Joint Sessions Judges;

Assistant Sessions Judges shall try such cases only as the Sessions Judge of the Division by general or special order makes over to them for trial.

Act X, 1872, s. 18.

by Assistant Sessions Judges.

194. The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Act X, 1875, s. 143.

Cognizance of offences by High Court.

Nothing herein contained shall be deemed to affect the provisions of any letters patent granted under the twenty-fourth and twenty-fifth of Victoria, chapter 104.

Charter, 1865, clause 24.

195. No Court shall take cognizance—

Act X, 1872, s. 467. Act X, 1875, s. 133. Act IV, 1877, ss. 40, 46.

(*a*) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate;

Prosecution for contempts of lawful authority of public servants.

Act X, 1872, s. 468. Act IV, 1877, s. 41. Part of Subordinate Magistrate's sub-ordinate to Court of District Judge. I. L. R. 2 Bom. 481.

(*b*) of any offence punishable under section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

Prosecution for certain offences against public justice.

Act X, 1872, s. 469. Act IV, 1877, s. 42.

(*c*) of any offence described in section 463, or punishable under section 471, 475 or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

Prosecution for certain offences relating to documents given in evidence.

Act X, 1872, s. 470, para. 2. Act X, 1875, s. 134. Act IV, 1877, s. 43. 2 Bom. L. R. 86. Per West, J. on appeal from order directing section, I. L. R. 1 All. 6.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

Nature of sanction necessary.

Act X, 1872, s. 470, para. 3.

When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and no such sanction shall remain in force for more than six months from the date on which it was given.

For the purposes of this section every Court, other than a Court of Small Causes, shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions division within which such Court is situate.

196. No Court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code, except section 127, or punishable under section 294A of the same Code, unless upon complaint made by order of, or under authority from, the Governor General in Council, the Local Government, or some officer empowered by the Governor General in Council in this behalf.

Act X, 1872, s. 466. Act X, 1875, s. 131. Act IV, 1877, ss. 38, 46.

Prosecution for offences against the State.

197. When any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Act X, 1872, s. 466, paras. 1, 2, 3 and 4. Act X, 1875, s. 132. Act IV, 1877, ss. 39, 46. 7 Bom. 63.

Prosecution of Judges and public servants.

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Power of Government as to prosecution.

198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

Act X, 1872, s. 143, para. 2. Act IV, 1877, s. 29.

Prosecution for breach of contract, defamation and offences against marriage.

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

Act X, 1872, ss. 478, 479. Act IV, 1877, s. 45. See 1 O'Kin. 524.

Prosecution for adultery.

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

200. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and

Act X, 1872, s. 144.

Examination of complainant.

Commencement of Proceedings before Magistrates.

shall be signed by the complainant, and also by the Magistrate:

Act X, 1872, s. 44, para. 2.

Provided as follows—

(*a*) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192:

Act IV, 1877, s. 30.

(*b*) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing:

Act X, 1872, s. 44, para. 2.

(*c*) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

Act X, 1872, s. 145.

201. If the complaint has been made in writing and the Magistrate is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper tribunal with an endorsement to that effect.

Procedure by Magistrate not competent to take cognizance of the case.

Act X, 1872, s. 146.

202. If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from time to time authorize in this behalf, or any Magistrate of the first or second class, sees reason to distrust the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant has been examined, record his reasons for distrusting the truth of the complaint, and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or direct a previous local investigation to be made by any officer subordinate to such Magistrate or a Police-officer, or by such other person, not being a Magistrate or Police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

Postponement of issue of process.

If such investigation is made by some person not being a Magistrate or a Police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a Police-station, except that he shall not have power to arrest without warrant.

This Section applies to the Police in the towns of Calcutta and Bombay.

Act X, 1872, s. 147, para. 1. Act IV, 1877, s. 32.

203. The Magistrate before whom a complaint is made or to whom it has been transferred may dismiss the complaint if, after examining the complainant and considering the result of the investigation (if any) made under section 202, there is in his judgment no sufficient ground for proceeding.

Dismissal of complaint.

CHAPTER XVII.

Of the Commencement of Proceedings before Magistrates.

Act X, 1872, ss. 147, para. 3, 148, para. 1, 149. Act XI, 1874, s. 1.

204. If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding and the case appears to be one in which according to the fourth column of the second schedule a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which according to that column a warrant should issue in the first instance, he may issue a warrant or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or some other Magistrate having jurisdiction.

Issue of process.

Nothing in this section shall be deemed to affect the provisions of section 90.

Act X, 1872, ss. 148, para. 2, 150.

205. Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

Act X, 1872, s. 151. Act IV, 1877, s. 37.

Magistrate may dispense with personal attendance of accused.

But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

Act [illegible], 1872, s. [illegible].

CHAPTER XVIII.

Of Inquiry into Cases triable by the Court of Session or High Court.

Act X, 1872, s. 143, [illegible] High Court.

206. Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, Magistrate of the first class or any Magistrate empowered in this behalf by the Local Government may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

Power to commit for trial.

But save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

Act X, 1872, s. 189. Act IV, 1877, s. 31.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court or, in the opinion of the Magistrate, ought to be tried by such Court.

Procedure in inquiries preparatory to commitment.

Act X, 1872, ss. 190 Act IV, 1877, s. 32.

208. The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

Taking of evidence produced.

Act X, 1872, ss. 357, 1, 362. Act IV, 1877, s. 33,

If the complainant or accused applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

Process for production of further evidence.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

Inquiry into cases triable by Court of Session or High Court.

Act IV, 1877, ss. 27, 34, 35.

Inquiry into Cases triable by Court of Session or High Court.

Act X, 1872, s. 195.
Act XI, 1874, s. 14.
Act IV, 1877, s. 87, omitting the Explanations.

209. When the evidence referred to in section 208, paragraphs 1 and 2, has been taken, and he has examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

When accused person to be discharged.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Act X, 1872, ss. 195, Explns. III, 196, 198, Expl. I.
Act IV, 1877, s. 88.
Act IV, 1877, s. 89, omitting paras. 3 and 4.

210. When, upon such evidence being taken and such examination (if any) being made, the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

When charge is to be framed.

Act X, 1872, s. 199.
Act X, 1875, s. 13.
Act IV, 1877, s. 90.

As soon as the charge has been framed, it shall be read and explained to the accused and a copy thereof shall, if he so requires, be given to him free of cost.

Charge to be explained, and copy furnished, to accused.

Act X, 1872, s. 200, paras. 1 and 3.
Act IV, 1877, s. 91.

211. The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

List of witnesses for defence on trial.

The Magistrate may in his discretion allow the accused to give in any further list of witnesses at a subsequent time; and nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial before the High Court, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Further list.

Act X, 1872, s. 200, para. 2.
Act IV, 1877, s. 91.

212. The Magistrate may in his discretion summon and examine any witness named in any list given in to him under section 211.

Power of Magistrate to examine such witnesses.

Act X, 1872, ss. 198, para. 1, 200, para. 2.
Act IV, 1877, ss. 89, para. 1, 91.

213. When the accused on being required to give in a list under section 211 has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

Order of commitment.

214. If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

Person charged outside Presidency-towns jointly with European British subject.

215. A commitment once made under section 213 or 214 by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

Act X, 1872, s. 197, Explanation and last para.

Quashing commitments under section 213 or 214.

216. When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself, to appear before the Court to which the accused has been committed:

Act X, 1872, s. 358.
Act IV, 1877, s. 92.

Summons to witnesses for defence when accused is committed.

Provided that where the accused has been committed to the High Court, the Magistrate may in his discretion leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that such witness is material, and if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness.

Act X, 1872, s. 359.
I. L. R. Cal. 583.

Refusal to summon unnecessary witness unless deposit made.

217. Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

Act X, 1872, s. 360.
Act IV, 1877, s. 93.

Bond of complainants and witnesses.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Detention in custody in case of refusal to attend or to execute bond.

Act X, 1872, s. 202, para. 1.

Commitment when to be notified.

218. When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge;

Act XI, 1874, s. 15.

Act X, 1872, s. 198, paras. 2, 3 and 4.

Charge, &c., to be forwarded to High Court or Court of Session.

and shall send the charge, the record of the inquiry and any weapon or other moveable thing which is to be produced in evidence to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Act X, 1872, s. 198, para. 4.

English translation to be forwarded to High Court.

When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

Act X, 1872, s. 357, para. 2. Act IV, 1877, s. 91, para. 4.

Power to summon supplementary witnesses.

219. The Magistrate may summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

Act X, 1875, s. 26. Act IV, 1877, s. 89, para. 3. See sec. 511, infra.

Custody of accused pending trial.

220. Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.

CHAPTER XIX.

Of the Charge.

See s. 554, infra.

Form of Charges.

Act X, 1872, s. 439, paras. 1 to 6. Act IV, 1877, s. 94.

Charge to state offence.

221. Every charge under this Code shall state the offence with which the accused is charged.

Specific name of offence sufficient description.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

How stated where offence has no specific name.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

What implied in charge.

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

Language of charge.

In the Presidency-towns, the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court.

Act X, 1875, s. 116. Act X, 1872, s. 439, last para. Act IV, 1877, s. 94, last para.

Previous conviction when to be set out.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date and place of the previous conviction must be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.

Illustrations.

Act X, 1872, s. 439, Illustrations. Act IV, 1877, s. 94, Illustrations.

(*a*) A is charged with the murder of B.

This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.

(*b*) A is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B. by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(*c*) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(*d*) A is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Act X, 1872, s. 440. Act IV, 1877, s. 95.

Particulars as to time, place and person.

222. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

Act X, 1872, s. 441. Act IV, 1877, s. 96.

When manner of committing offence must be stated.

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

(*a*) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b*) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(*c*) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(*d*) A is accused of obstructing B, a public servant, in discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(*e*) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(*f*) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

XVIII, 1882, s. 28.

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Words in charge taken in sense of law under which offence is punishable.

X, 1872, s. 443. X, 1875, s. 24. IV, 1877, s. 98.

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was misled by such error or omission.

Effect of errors.

Illustrations.

(*a*) A is charged, under section 242 of the Indian Penal Code with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(*b*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d*) A is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(*e*) A was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

226. When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

Act X, 1872, s. 446. Act X, 1875, ss. 7, 8.

Procedure on commitment without charge or with imperfect charge.

227. Any Court may alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.

Every such alteration shall be read and explained to the accused.

Act X, 1872, ss. 444, 445. Act X, 1875, ss. 9, 10. Act IV, 1877, ss. 99, 100.

Court may alter charge.

228. If the charge framed or alteration made under Section 226 or Section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may in its discretion, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

Act X, 1872, s. 447. Act X, 1875, s. 11. Act IV, 1877, s. 101.

When trial may proceed immediately after alteration.

229. If the new or altered charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

Act X, 1872, s. 448. Act X, 1875, s. 12. Act IV, 1877, s. 102.

When new trial may be directed, or trial suspended.

230. If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Act X, 1872, s. 450. Act X, 1875, s. 13. Act IV, 1877, s. 104.

Stay of proceedings if prosecution of offence in altered charge require previous sanction.

231. Whenever a charge is altered by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration, any witness who may have been examined.

Act X, 1872, s. 449. Act X, 1875, s. 15, omitting 'during the trial.' Act IV, 1877, s. 103.

Recall of witnesses when charge altered.

232. If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

If the Court is of opinion that the facts of the case are such that no valid charge could be pre-

Act X, 1872, s. 451.

Effect of material error.

ferred against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

Act XI, 1874, s. 40. A is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

Joinder of Charges.

Act X, 1872, s. 452. Act X, 1875, s. 17. Act IV, 1877, s. 105.

Separate charges for distinct offences.

233. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and the causing grievous hurt.

Act X, 1872, s. 453. Act X, 1875, s. 18. 1 O'Kin. 480. I. L. R., 3 Calc. 540. Act IV, 1877, s. 106; cl. 24 & 25 Vic., c. 96, s. 5, and 71 Archbold p. 59.

Three offences of same kind within year may be charged together.

234. When a person is accused of more offences than one of the same kind, committed within the space of twelve months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.

Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code, or of any special or local law.

Act X, 1872, s. 454, omitting Illustrations (*e*), (*h*), (*i*) and (*k*). Act X, 1875, s. 19. Act IV, 1877, s. 107. I. Penal Code, sec. 33.

I.—Trial for more than one offence.

235. I.—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

II.—Offence falling within two definitions.

II.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with and tried at one trial for each of such offences.

III.—Acts constituting one offence, but constituting when combined a different offence.

III.—If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, or for any offence constituted by any one, or more, of such acts.

Nothing contained in this section shall affect the Indian Penal Code, section 71.

Illustrations

to paragraph I—

(*a*) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with and tried for offences under sections 225 and 333 of the Indian Penal Code.

(*b*) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.

(*c*) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code.

(*d*) A has in his possession several seals knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal, under section 473 of the Indian Penal Code.

(*e*) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.

(*f*) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.

(*g*) A, with six others, commits the offences of rioting, grievous hurt, and of assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147 and 325 and 152 of the Indian Penal Code.

(*h*) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.

The separate charges referred to in illustrations (*a*) to (*h*) respectively may be tried at the same time.

to paragraph II—

(*i*) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.

(*j*) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.

(*k*) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.

(*l*) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code.

to paragraph III—

(*m*) A commits robbery on B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code.

Act X, 1872, s. 455. Act X, 1875, s. 20. Act IV, 1875, s. 108. N.W.P., 1875, p. 197.

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Where it is doubtful what offence has been committed.

Illustration.

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating.

X. 1872, s. 456. X. 1875, s. 21. IV. 1877, s. 109.

237. If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

When a person is charged with one offence, he can be convicted of another.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

X, 1872, 457. X, 1875, 22. IV, 1877, 110. om. 241. West, J.

238. When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

When offence proved included in offence charged.

When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged with it.

Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(*a*) A is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

h. Cr. (*b*) A is charged under section 325 of the Indian Penal Code with causing grievous hurt. He proves that he acted in grave and sudden provocation. He may be convicted under section 335 of that Code.

239. When more persons than one are accused of the same offence, or of different offences committed in the same transaction; or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit; and the provisions contained in the former part of this chapter shall apply to all such charges.

What persons may be charged jointly.

Illustrations.

(*a*) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(*b*) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(*c*) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

240. When more charges than one are made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

Act X, 1872, s. 459, omitting the first ten words "In triable before a Court of Session or High Court," and inserting, "the complainant." Act X, 1875, s. 102. Act IV, 1877, s. 112. New.

Withdrawal of remaining charges on conviction on one of several charges.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

241. The following procedure shall be observed by Magistrates in the trial of summons-cases.

Act X, 1872, s. 203, para. 1. Act IV, 1877, s. 414.

Procedure in summons-cases.

242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.

Act X, 1872, ss. 203, para. 2, first clause, 246, para. 1. Act IV, 1877, s. 119.

Substance of accusation to be stated.

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

Act IV, 1877, s. 120.

Conviction on admission of truth of accusation.

244. If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as

Act X, 1872, s. 207. Act IV, 1877, s. 121.

Procedure when no such admission is made.

Trial of Summons-cases by Magistrates.

may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

Act X, 1872, s. 361. Act IV, 1877, s. 143.

The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

Act X, 1872, s. 211, paras. 1 and 2. Act IV, 1877, s. 126.

245. If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Acquittal.

If he finds the accused guilty, he shall pass sentence upon him according to law.

Sentence.

Act X, 1872, s. 203, para. 2, second clause. Act IV, 1877, s. 117. Nelson, 206.

246. A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons.

Finding not limited by complaint or summons.

Act X, 1872, ss. 205, 208, para. 3, 212. Act IV, 1877, s. 118.

247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

Non-appearance of complainant.

Act X, 1872, s. 210. Act IV, 1877, s. 126.

248. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

Withdrawal of complaint.

New.

249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

Power to stop proceedings when no complainant.

Act X, 1872, s. 211, paras. 1 and 2. Act IV, 1877, s. 242.

250. If in any case instituted upon complaint a Magistrate acquits the accused under section 245 or section 247, and is of opinion that the complaint was frivolous or vexatious, he may, in his discretion, by his order of acquittal, direct the complainant to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit.

Frivolous or vexatious complaints.

The sum so awarded shall be recoverable as if it were a fine: Provided that, if it cannot be realized, the imprisonment to be awarded shall be simple and for such term, not exceeding thirty days, as the Magistrate directs.

Recovery of compensation.

At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

Trial of Warrant-cases by Magistrates.

CHAPTER XXI.

Of the Trial of Warrant-cases by Magistrates.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

Act X, s. 213.

Procedure in warrant-cases.

252. When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution.

Act X, s. 190. See I. L. Calc.,

Evidence for prosecution.

The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

Act X, 1872, 302, para. Act IV, 1877, s. 143, 1.

253. If upon taking all the evidence referred to in section 252, and such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which if unrebutted would warrant his conviction, the Magistrate shall discharge him.

Act X, s. 215, Expln. I. L. Calc.,

Discharge of accused.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

254. If, when such evidence and examination have been taken, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Act X, s. 216, ant Act XI, s. 16, Act IV, ss. 11

Charge to be framed when offence appears proved.

255. The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

Act X, s. 217, Act IV, s. 128.

Plea.

If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon.

Cf. Act X, ss. 2 2, 3

Act X, 1872, s. 218. Act IV, 1877, s. 121.

256. If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to enter upon his defence and to produce his evidence, and shall, at any time while he is making his defence, be allowed to recall and cross-examine any witness for the prosecution present in the Court or its precincts.

Defence.

If the accused puts in any written statement, the Magistrate shall file it with the record.

Act X, 1872, s. 362, para. 2. Act IV, 1877, s. 143, para. 2. Cl. 252 and 208, *supra*.

257. If the accused applies to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) for the purposes of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Such ground shall be recorded by him in writing.

Process for compelling production of evidence at instance of accused.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Act X, 1872, s. 220, omitting the Explanation. See *infra*, s. 347. Act IV, 1877, s. 126, first half.

258. If in any case under this chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Acquittal.

If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.

Conviction.

Act X, 1872, s. 215, Expl. I. Contrast. Act IV, 1877, s. 118; but see s. 133 of same.

259. When the proceedings have been instituted upon complaint and upon any day fixed for the hearing of the case the complainant is absent and the offence may be lawfully compounded, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

Absence of complainant.

CHAPTER XXII.

OF SUMMARY TRIALS.

Act X, 1872, ss. 222, 223, 224.

260. Notwithstanding anything contained in this Code,

Power to try summarily.

(1) the District Magistrate,

(2) any Magistrate of the first class specially empowered in this behalf by the Local Government, and

(3) any Bench of Magistrates invested with the powers of a Magistrate of the first class and specially empowered in this behalf by the Local Government may try in a summary way all or any of the following offences:—

I. L. R., 3 Cal., 267.

(*a*) Offences not punishable with death, transportation, or imprisonment for a term exceeding six months;

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(*b*) Offences relating to weights and measures, under sections 264, 265 and 266 of the Indian Penal Code;

(*c*) Hurt, under section 323 of the same Code;

(*d*) Theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*e*) Receiving or retaining stolen property, under section 411 of the same Code, where the value of such property does not exceed fifty rupees;

(*f*) Assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees;

(*g*) Mischief, under section 427 of the same Code;

(*h*) House-trespass, under section 448 of the same Code;

(*i*) Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code; Act XI, 1874, s. 17.

(*j*) Abetment of any of the foregoing offences;

(*k*) An attempt to commit any of the foregoing offences, when such attempt is an offence:

Provided that no case in which a District Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

Act X, 1872, s. 225.

261. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences:—

Power to invest Bench of Magistrates invested with less power.

(*a*) Offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426 and 447;

(*b*) Offences against Municipal Acts, and the conservancy-clauses of Police Acts, punishable only with fine, or with imprisonment for a term not exceeding one month;

(*c*) Abetment of any of the foregoing offences; New.

(*d*) An attempt to commit any of the foregoing offences, when such attempt is an offence. New.

Act X, 1872, s. 226.

262. In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

Procedure for summons and warrant-cases applicable.

No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this chapter.

Limit of imprisonment.

Act X, 1872, s. 227.

263. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such form as the Local Government may direct the following particulars:—

Record in cases where there is no appeal.

(*a*) the serial number;

(*b*) the date of the commission of the offence;

(*c*) the date of the report or complaint;

(*d*) the name of the complainant (if any);

(*e*) the name, parentage and residence of the accused;

(*f*) the offence complained of and the offence (if any) proved, and in cases coming under (*d*), (*e*) or (*f*) of section 260 the value of the property in respect of which the offence has been committed.

(*g*) the plea of the accused and his examination (if any);

(*h*) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;

(*i*) the sentence or other final order; and

(*j*) the date on which the proceedings terminated.

Act X, 1872, s. 228. **264.** In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

Record in appealable cases.

Such judgment shall be the only record in cases coming within this section.

Act X, 1872, s. 229. **265.** Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Language of record and judgment.

Act X, 1872, s. 230. The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

Bench may be authorized to employ clerk.

CHAPTER XXIII.

Of Trials before High Courts and Courts of Session.

A.—Preliminary.

Act X, 1875, s. 3. **266.** In this chapter, except in section 307, the expression "High Court" means a High Court of Judicature established or to be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, and includes the Chief Court of the Panjáb, and such other Courts as the Governor General in Council may from time to time, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this chapter.

"High Court" defined.

Act X, 1875, s. 32. **267.** All trials under this chapter before a High Court shall be by jury;

Trials before High Court to be by jury.

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, the trial may, if the High Court so direct, be by jury.

Act X, 1872, s. 232. **268.** All trials before a Court of Session shall be either by jury, or with the aid of assessors.

Trials before Sessions Court to be by jury or with assessors.

Act X, 1872, s. 233, parts. 1 and 2. **269.** The Local Government may by order in the official Gazette direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any District, and from time to time revoke or alter such order.

Local Government may order trials before Court of Session to be by jury.

When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for all such offences.

Act X, 1872, s. 235. **270.** In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

Trial before Court of Session to be conducted by Public Prosecutor.

B.—Commencement of Proceedings.

Act X, 1872, s. 237. **271.** When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Commencement of trial.

Act X, 1875, ss. 28, 29. If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

Act X, 1875, s. 73. Plea of guilty.

Act X, 1872, s. 238. Act X, 1875, s. 30. **272.** If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try the case:

Refusal to plead or claim to be tried.

Act X, 1872, s. 265. Act X, 1875, s. 34. Provided that, subject to the right of objection hereinafter mentioned, the same jury may try or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

Trial by same jury or assessors of several offenders in succession.

Act X, 1875, s. 14. **273.** In trials before the High Court when it appears to the High Court at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

Entry on unsustainable charge.

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

Effect of entry.

C.—Choosing a Jury.

Act X, 1875, s. 33. **274.** In trials before the High Court the jury shall consist of nine persons.

Number of jury.

Act X, 1872, s. 236. In trials by jury before the Court of Session, the jury shall consist of such uneven number not being less than three, or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may direct.

Act X, 1872, s. 241. **275.** In a trial by jury, before the Court of Session, of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

Jury for trial of persons not Europeans or Americans before Court of Session.

Act X, 1872, s. 242, Act X, 1875, s. 33. **276.** The jurors shall be chosen by lot from the persons summoned to act as such, in such manner as the High Court may from time to time by rule direct:

Jurors to be chosen by lot.

As to practice in High Court, Bombay, see I. L. R., 1 Bom. 462.

Act X, 1875, s. 49.

Proviso.

Provided that—

Existing practice maintained.

1st, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed;

Act X, 1872, s. 243, para. 3. Act X, 1875, s. 83.

Persons not summoned when eligible.

2nd, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present; and

Act X, 1875, s. 38.

Trials before special jurors.

3rd, in the Presidency-towns—

(a) if the accused person is charged with having committed an offence punishable with death, or

(b) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed.

Act X, 1872, s. 243, paras. 1 & 2. Act X, 1875, s. 53.

277. As each juror is chosen, his name shall be called aloud, and upon his appearance, the accused shall be asked if he objects to be tried by such juror.

Names of jurors to be called.

Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated:

Objection to jurors.

Act X, 1875, s. 47, para. 1.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

Objection without grounds stated.

Act X, 1872, ss. 243, 405, 406. Act X, 1875, ss. 47, 54.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:—

Grounds of objection.

(a) some presumed or actual partiality in the juror;

(b) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years;

(c) his having by habit or religious vows relinquished all care of worldly affairs;

(d) his holding any office in or under the Court;

(e) his executing any duties of police or being entrusted with police-duties;

(f) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

Act X, 1872, s. 243, Act X, 1875, s. 47, 54.

(g) inability to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted;

(h) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

279. Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

Act X, 1872, s. 243, para. 3. Act X, 1875, ss. 48, 55.

Decision of objection.

If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276; or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided that no objection to such juror or other person is taken under section 278 and allowed.

Act X, 1872, s. 243, para. 4. Act X, 1875, s. 56.

Supply of place of juror against whom objection allowed.

280. When the jurors have been chosen, they shall appoint one of their number to be foreman.

Act X, 1872, s. 246. Act X, 1875, s. 58.

Foreman of jury.

The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

281. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.

New.

Swearing of jurors.

282. If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged and a new jury chosen.

Act X, 1872, s. 254.

Procedure when juror comes to attend, &c.

In each of such cases the trial shall commence anew.

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

Act X, 1875, s. 99.

Discharge of jury in case of sickness of prisoner.

D.—Choosing Assessors.

284. When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

Act X, 1872, s. 239.

Assessors how chosen.

285. If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout

Act X, 1872, s. 259.

Procedure when assessor is unable to attend.

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the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

E.—Trial to Close of Cases for Prosecution and Defence.

Act X, 1872, s. 247. Act XI, 1874, s. 19. Act X, 1875, s. 59.

286. When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

Opening case for prosecution.

The prosecutor shall then examine his witnesses.

Examination of witnesses.

Act X, 1872, s. 248. Act X, 1875, s. 60.

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.

Examination of accused before Magistrate to be evidence.

Act X, 1872, s. 249. Act XI, 1874, s. 20. Act X, 1875, s. 75. 12 Ben. Appendix, 16, 17.

288. The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.

Evidence given at preliminary inquiry admissible.

The exercise of this discretion may be reviewed on appeal, 11 Bom. 282.

Act X, 1872, s. 251, paras. 1 and 2. Act X, 1875, s. 62.

289. When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

Procedure after examination of witnesses for prosecution.

In such case it is not necessary to ask the assessors their opinion. —I. L. R., 1 All., 610, n.

If he says that he does not, the prosecutor may sum up his case; and if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused or any one of several accused says that he means to adduce evidence and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused, or any one of several accused says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

Act X, 1872, s. 251, para. 3. Act X, 1875, s. 62.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any) and after their cross-examination and re-examination (if any) may sum up his case.

Defence.

291. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in sections 211 and 231, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Right of accused as to examination and summoning of witnesses.

Act X, 1872, s. 252. Act X, 1875, s. 63.

292. If the accused, or any of the accused, has stated, when asked under section 289, that he means to adduce evidence, the prosecutor shall be entitled to reply.

Prosecutor's right of reply.

Act X, 1872, s. 253. Act X, 1875, s. 64. Taken from Livi. Art. 257.

293. Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

View by jury or assessors.

Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

Act X, 1872, s. 258. Act X, 1875, s. 69.

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

When juror or assessor may be examined.

Act X, 1872, s. 260. Act X, 1875, s. 67.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Jury or assessors to attend at adjourned sitting.

Act X, 1872, s. 65.

296. The High Court may from time to time make rules as to keeping the jury together during a trial before such Court lasting for more than one day, and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

Locking-up jury.

F.—Conclusion of Trial in Cases tried by Jury.

Act X, 1872, s. 255, para. 2. Act X, 1875, s. 90.

297. In cases tried by jury, when the case for the defence, and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Charge to jury.

Act X, 1872, s. 256. Act X, 1875, s. 91.

298. In such cases, it is the duty of the Judge—

Duty of Judge.

(*a*) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, the admissibility of evidence or the propriety of questions asked by or on behalf

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of the parties, and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial;

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(*a*) It is proposed to prove a statement made by a person not being a witness in the case on the ground that circumstances are proved which render evidence of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b*) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Act X, 1872, s. 257. Act X, 1875, s. 93.

Duty of jury.

299. It is the duty of the jury—

(*a*) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(*b*) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(*c*) to decide all questions which according to law are to be deemed questions of fact;

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(*a*) *A* is tried for the murder of *B*.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts *A* ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b*) The question is whether a person entertained a reasonable belief on a particular point,—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

Act X, 1872, s. 263, para. 1. Act X, 1875, s. 92.

Retirement to consider.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict,

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

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Act X, 1872 s. 263, para 1. Act X, 1875, s. 94.

Delivery of verdict.

301. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Act X, 1872, s. 263, para. 3. Act X, 1875, s. 96. I. L. R., 6 Calc., 351 (where the jury are unanimous).

Procedure where jury differ.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Act X, 1872, s. 263, para. 2. Act X, 1872, s. 95.

Verdict to be given on each charge. Judge may question jury.

303. Unless otherwise ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Act X, 1872, s. 263, para. 2, last sentence.

Questions and answers to be recorded.

Such questions and the answers to them shall be recorded.

New. Dears. C. C. 229.

Amending verdict.

304. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Act X, 1875, ss. 97, 98.

Verdict in High Court when to prevail.

305. When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

If the Judge disagrees with the majority, he shall at once discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Act X, 1872, s. 263, para. 4.

Verdict in Sessions Court when to prevail.

306. When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

Act XI, 1874, s. 21.

If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

Act X, 1872, s. 263, paras. 5 and 6. Act XI, 1874, s. 21. I. L. R., 1 Bom., 10. The dissent must be I. L. R., 9 Bom., 526.

Procedure where Sessions Judge disagrees with verdict.

307. If in any such case the Sessions Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, record-

Trials before High Courts and Courts of Session.

ing the grounds of his opinion and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

I. L. R., 3 Calc., 623.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody or admit him to bail.

See Markby, J., in I. L. R., 3 Calc., 192.

In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

G.—Re-trial of Accused after Discharge of Jury.

Act X, 1875, s. 100.

308. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

Re-trial of accused after discharge of jury.

H.—Conclusion of Trial in Cases tried with Assessors.

Act X, 1872, ss. 255, para. 1, 261, 262.

309. When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

Delivery of opinions of assessors.

The Judge shall then give judgment; but in doing so shall not be bound to conform to the opinions of the assessors.

Judgment.

If the accused is convicted, the Judge shall pass sentence on him according to law.

I.—Procedure in Case of Previous Conviction.

New.

310. In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction, for any offence, the procedure laid down in sections 271, 286, 305, 306 and 309 shall be modified as follows:—

Procedure in case of previous conviction.

(*a*) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence.

(*b*) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge.

(*c*) If he answers that he has been so previously convicted the Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury or the Court and the assessors (as the case may be) shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.

Trials before High Courts and Courts of Session.

J.—List of Jurors for High Court, and summoning Jurors for that Court.

Act X, 1875, s. 39.

311. In each Presidency-town, the jurors' book for the year current when this Code comes into force shall be taken as containing a correct list of persons liable to serve as jurors under this chapter;

Jurors' book.

and those persons whose names are entered in the said book as being liable to serve on special juries only shall be deemed to be persons privileged and liable to serve only as special jurors under this chapter during the year for which the said list has been prepared.

Act X, 1875, s. 41.

Act X, 1875, s. 40.

312. The names of not more than two hundred persons shall at any one time be entered in the special jurors' list.

Number of special jurors.

Act X, 1875, s. 42.

313. The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

Lists of common and special jurors.

(*a*) a list of all persons liable to serve as common jurors; and

(*b*) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

The Governor General in Council in the case of the High Court at Calcutta, and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

Act X, 1875, s. 43.

The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

Discretion of officer preparing lists.

Act X, 1875, s. 44.

314. Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Publication of preliminary lists.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

Act X, 1875, s. 45.

315. Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions in each Presidency-town at least twenty-seven of those who are liable to serve

Number of jurors to be summoned in Presidency-town.

Trials before High Courts and Courts of Session.

on special juries, and fifty-four of those who are liable to serve on common juries.

No person shall be so summoned more than once in six months unless the number cannot be made up without him.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Supplementary summons.

Act X, 1875, s. 50.

316. Whenever a High Court has given notice of its intention to hold sittings at any place outside the Presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Summoning jurors outside the Presidency-towns.

Act X, 1875, s. 51.

317. In addition to the persons so summoned as jurors, the said Court of Session shall, if it think needful, after communication with the Commanding Officer, cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's Army resident within ten miles of its place of sitting, as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

Military jurors.

All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

Act X, 1875, s. 66.

318. Any person summoned under section 315, 316 or 317, who without lawful excuse fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable by order of the Judge to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

Failure of jurors to attend.

K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

Act X, 1872, s. 404.

319. All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the District in which they reside.

Liability to serve jurors or assessors.

Act X, 1872, ss. 405, 406, para. 1.

320. The following persons are exempt from liability to serve as jurors or assessors, namely:—

Exemptions.

(*a*) Officers in civil employ superior in rank to a District Magistrate;

(*b*) Judges;

(*c*) Commissioners and Collectors of Revenue or Customs;

(*d*) Persons engaged in the Preventive Service in the Customs Department;

(*e*) Persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;

(*f*) Persons actually officiating as priests or ministers of their respective religions;

(*g*) Persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors;

(*h*) Surgeons and others who openly and constantly practise the medical profession;

(*i*) Persons employed in the Post-office and Telegraph Departments;

(*j*) Persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641.

(*k*) Other persons exempted by the Local Government from liability to serve as jurors or assessors.

Act X, 1872, s. 400.

321. The Sessions Judge and the Collector of the District, or such other officer as the Local Government appoints in this behalf, shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not likely to be successfully objected to under section 278, clauses (*b*) to (*k*), both inclusive.

List of jurors and assessors.

The list shall contain the name, place of abode and quality or business of every such person; and if the person is an European or an American, the list shall mention the race to which he belongs.

Act X, 1872, s. 401, para. 1.

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

Publication of list.

Act X, 1872, s. 401, para. 2.

323. To every such copy shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

Objections to list.

Act X, 1872, s. 402.

324. For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deem qualified for such service.

Revision of list.

In the event of a difference of opinion between the Collector or other officer as aforesaid and the Sessions Judge, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

Act X, 1872, s. 408.

325. The list so prepared and revised shall be again revised once in every year.

Annual revision of list.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

Act X, 1872, s. 407.

326. The Sessions Judge shall ordinarily, three days at least before the day which he may from time to time fix for holding the sessions, send a letter to the District Magistrate requesting him to summon as many persons named in the said revised list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial.

District Magistrate to summon jurors and assessors.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

Act X, 1872, s. 410.

327. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever for other reasons such direction is found to be necessary.

Power to summon another set of jurors or assessors.

Act X, 1872, s. 409, para. 1.

328. Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

Form and service of summons.

Act X, 1872, s. 411.

329. Where any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

When Government or Railway servant may be excused.

Act X, 1872, s. 412.

330. The Court of Session may for reasonable cause excuse any juror or assessor from attendance at any particular session.

Court may excuse attendance of juror or assessor.

Act X, 1872, s. 413.

331. At each session, the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.

List of jurors and assessors attending.

Such list shall be kept with the list of the jurors and assessors as revised under section 324.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

Act X, 1872, s. 414.

332. Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

Penalty for non-attendance of juror or assessor.

Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may by order of the Court of Session be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

L.—Special Provisions for High Courts.

Act X, 1875, s. 146. Cf. s. 259, *supra*.

333. At any stage of any trial before a High Court under this Code before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

Power of Advocate General to stay prosecution.

Act X, 1875, s. 4.

334. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Time of holding sittings.

Act X, 1875, s. 5.

335. The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, and as the Local Government in the case of the other High Courts, may direct.

Place of holding sittings.

But it may from time to time, in the case of the High Court at Fort William with the consent of the Governor General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of

Notice of sittings.

the original criminal jurisdiction of the High Court.

336. The High Court may direct that all European British subjects and persons liable to be tried by it under section 214, who have been committed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court,

Place of trial of European British subjects.

or direct that they shall be tried at a particular place named.

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

337. In the case of any offence triable exclusively by the Court of Session or High Court the District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the offence, or, with the sanction of the District Magistrate, any other Magistrate, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor, in the commission thereof.

Tender of pardon to accomplice.

Every person accepting a tender under this section shall be examined as a witness in the case.

Such person, if not on bail, shall be detained in custody until the termination of the trial by the Court of Session or High Court, as the case may be.

Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when any Magistrate has made such tender and examined the person to whom it has been made, he shall not try the case himself although the offence which the accused appears to have committed may be triable by such Magistrate.

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

Power to direct tender of pardon.

339. Where a pardon has been tendered under section 337 or 338, and any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

Commitment of person to whom pardon has been tendered.

The statement made by a person under pardon may be given in evidence against him when the pardon has been withdrawn under this section.

No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

340. Every person accused before any Criminal Court may of right be defended by a pleader.

Right of accused to be defended.

341. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Procedure where accused does not understand proceedings.

342. For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

Power to examine the accused.

The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answer may tend to show he has committed.

No oath shall be administered to the accused.

343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

No influence to be used to induce disclosures.

X, 1875, s. 37.

X, 1872, s. 347. IV, 1877, s. 160.

X, 1872, s. 348, omitting "as a Court of Session." X, 1875, s. 77.

Act X, 1872, s. 349. Act X, 1876, s. 78. Act IV, 1877, s. 151. 7 Calc., 66.

Act X, 1872, s. 186, paras. 1 and 2. Act XI, 1874, s. 13. Act X, 1875, s. 31. Act IV, 1877, s. 130.

Act X, 1872, s. 186, para. 3. Act X, 1875, s. 130. Act IV, 1877, s. 131.

Act X, 1872, ss. 193, para. 1, 250, 342. Act X, 1875, s. 61. Act IV, 1877, ss. 5, 148. 6 Calc., 521. 1 O'Kin. 436.

Act X, 1872, ss. 193, para. 2, 313; see Act I, 1872, s. 114, ill. (h).

Act X, 1872, s. 193, Explan.

Act X, 1872, s. 345.

Act X, 1872, s. 344. Act IV, 1877, s. 149.

Act X, 1872, ss. 104, para. 1 and Expln., 208, para. 1, 210, 264. Act X. 1875, s. 66. Act IV, 1877, ss. 86, 124. 11 & 12 Vic., c. 42, s. 21.

344. If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, by order in writing, stating the reasons therefor, from time to time postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and by a warrant remand the accused if in custody :

Power to postpone or adjourn proceedings.

Remand.

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

EXPLANATION.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Reasonable cause for remand.

Act X, 1872, s. 188. Act X, 1875, s. 151. Act IV, 1877, s. 133. Compare N. Y. Crim. Proc. Code, s. 731.

345. The offences punishable under the sections of the Indian Penal Code described in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table :—

Compounding offences.

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Uttering words &c., with deliberate intent to wound the religious feelings of any person	298	The person whose religious feelings are intended to be wounded.
Causing hurt ...	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person	341, 342	The person restrained or confined.
Assault or use of criminal force ...	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person ...	426, 427	The person to whom the loss or damage is caused.
Criminal trespass ...	447	The person in possession of the property trespassed upon.
House-trespass ...	448	
Criminal Breach of Contract of service ...	490, 491, 492	The person with whom the offender has contracted.
Adultery ...	497	The husband of the woman.
Enticing or taking away or detaining with a criminal intent a married woman ...	498	
Defamation ...	500	The person defamed.
Printing or engraving matter knowing it to be defamatory ...	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter ...	502	
Insult intended to provoke a breach of the peace ...	504	The person insulted.
Criminal Intimidation, except when the offence is punishable with imprisonment for seven years ...	506	The person intimidated.

The offence of voluntarily causing hurt, voluntarily causing grievous hurt, causing hurt by an act which endangers life, or causing grievous hurt by an act which endangers life, punishable under section 324, section 335, section 337, or section 338 of the Indian Penal Code may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused.

When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot or a lunatic, any person competent to contract on his behalf may compound such offence.

The composition of an offence under this section shall have the effect of an acquittal of the accused.

No offence not mentioned in this section shall be compounded.

346. If, in the course of an inquiry or trial before a Magistrate in any district outside the Presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

Procedure of provincial Magistrate in cases which he cannot dispose of.

Act X, 1872, s. 45, paras. 1 and 2.

Madras H. C. ruling cited Nelson, 63.

The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

347. If in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings and commit the accused under the provisions hereinbefore contained.

Procedure when after commencement of inquiry or trial Magistrate finds case should be committed.

Act X, 1872, ss. 46, para. 3, 221, 436, para. 3.

Act IV, 1877, s. 127.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

348. Whoever, having been convicted of an offence punishable under Chapter XII or XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate before whom he is accused considers him an habitual offender, be committed to the Court of Session or High Court, as the case may be; or, in districts in which the District Magistrate has been invested with powers under section 30, placed on his trial before such Magistrate.

Trial of persons previously convicted of offences against coinage, stamp-law and property.

Act X, 1872, s. 316.

Act IV, 1877, s. 128.

349. Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion after hearing the evidence for the prosecution and the accused that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

Procedure when Magistrate cannot pass sentence sufficiently severe.

Act X, 1872, s. 46, paras. 1 and 2, inserting "different in kind from or."

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case; and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law: Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

350. Whenever any Magistrate, after having heard the whole or any part of the evidence in an inquiry or trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the inquiry or trial:

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

e.g., he may order committal to Sessions Court; I. L. R., 1 Mad., 269.

See I. L. R., 4 Bom. 240.

Act X, 1872 ss. 328, 329.

Act IV 1877, s. 158.

See 4 Calc. 452, and sec. 558, *infra*.

Provided as follows:—

(*a*) In any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard:

(*b*) The High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate, may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby; and may order a new inquiry or trial.

Nothing in this section applies to cases in which proceedings have been stayed under section 346.

351. Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of examination, for any offence of which such Court can take cognizance and which, from the evidence, he may appear to have committed; and may be proceeded against as though he had been arrested or summoned.

Detention of offenders attending Court.

Act X, 1872, s. 104.

When the detention takes place in the course of an inquiry under Chapter XVIII, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard.

352. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Courts to be open.

Act X, 1872, s. 187.

Act X, 1875, s. 150.

Act IV, 1877, s. 182.

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case

that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

CHAPTER XXV.

Of the Mode of taking and recording Evidence in Inquiries and Trials.

Act X, 1872, s. 191, para. 1. Act IV, 1878, s. 83, para. 1.

Evidence to be taken in presence of accused.

353. Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Act X, 1872, s. 332.

Manner of recording evidence outside Presidency-towns.

354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Act X, 1872, ss. 222, 333.

Record in summons-cases, and in trials of certain offences by first and second class Magistrates.

355. In summons-cases tried before a Magistrate, other than a Presidency Magistrate, and in cases of the offences mentioned in section 260, clauses (*b*) to (*k*), both inclusive, when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

Act X, 1872, s. 334. XI B. L. R. Appx. p. 5.

Record in other cases outside Presidency-towns.

356. In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates) and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing in the language of the Court, by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

No exception of cases in which no appeal lies. 11 Ben. Appx. 6.

Evidence given in English.

When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

Act X, 1872, s. 335.

Language of record of evidence.

357. The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of each witness shall in the cases referred to in section 356 be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue.

Act X, 1872, s. 336.

Option to Magistrate in cases under section 355.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

Act X, 1872, s. 338.

Mode of recording evidence under section 356 or 357.

359. Evidence taken under section 356 or 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

The Magistrate or Sessions Judge may in his discretion take down, or cause to be taken down, any particular question and answer.

Act X, 1872, s. 339.

Procedure in regard to such evidence when completed.

360. As the evidence of each witness taken under section 356 or 357 is completed, it shall be read over to him in the presence of

the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

Act X, 1872, s. 340.

Interpretation of evidence to accused or his pleader.

361. Whenever any evidence is given in a language not understood by the accused and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Act X, 1872, s. 335. Act IV, 1877, s. 116.

Record of evidence in Presidency Magistrates' Courts.

362. In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall be part of the record.

Act X, 1872, s. 338. Act IV, 1877, s. 116.

Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may in his discretion take down, or cause to be taken down, any particular question or answer.

Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

Act X, 1872, s. 341.

Remarks respecting demeanour of witness.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Act X, 1872, s. 346, paras. 1, 2, 3 and 4. Act IV, 1877, ss. 84, 123.

Examination of accused how recorded.

364. Whenever the accused is examined by any Magistrate or by any Court other than a High Court established by Royal Charter or the Chief Court of the Panjáb, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or English; and such record shall be shown or read to him, or if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

Act X, 1875, s. 68, including Chief Court.

Record of evidence in High Court.

365. Every High Court established by Royal Charter and the Chief Court of the Panjáb may from time to time by general rule prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

CHAPTER XXVI.

OF THE JUDGMENT.

Act VIII, 1859, s. 183. Act X, 1872, ss. 211, para. 3, 462.

Mode of delivering judgment.

366. The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court either immediately or at some subsequent time of which due notice shall be given to the parties or their pleaders; and the accused shall, if in custody, be brought up, or if not in custody shall be required to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only, in which case it may be pronounced in the presence of his pleader.

Act X, 1872, s. 463. Cf. Act X, 1877, s. 200.

Language of judgment.

367. Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon, and the

Act X, 1872, s. 464, para. 1. Cf. Act VIII, 1859, s. 185.

Contents of judgment.

reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it.

Act X, 1872, ss. 461, cl. 1, 464, para 1.

It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced.

Act X, 1872, s. 461, cl. 2.

Judgment in alternative.

When the conviction is under the Indian Penal Code, and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

Act X, 1872, s. 287, para. 2.

If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed:

Act X, 1872, ss. 255, last para., 464, para. 4.

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

Act X, 1872, s. 321. Act X, 1875, s. 113.

Sentence of death.

368. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Act X, 1872, s. 319.

Sentence of transportation.

No sentence of transportation shall specify the place to which the person sentenced is to be transported.

Act X, 1872, s. 464, para. 1, second sentence.

Court not to alter judgment.

369. No Court other than a High Court when it has signed its judgment shall alter or review the same, except as provided in section 395 or to correct a clerical error.

Act IV, 1877, s. 114.

Presidency Magistrate's judgment.

370. Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars:—

(*a*) the serial number of the case;

(*b*) the date of the commission of the offence;

(*c*) the name of the complainant (if any);

(*d*) the name of the accused person, and (except in the case of an European British subject) his parentage and residence;

(*e*) the offence complained of or proved;

(*f*) the plea of the accused and his examination (if any);

(*g*) the final order;

(*h*) the date of such order; and

Act IV, 1877, s. 126.

(*i*) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

Act XI, 1874, s. 41, para. 1.

Judgment to be explained and copy given to accused.

371. The judgment shall be explained to the accused, and on his application a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

Act XI, 1874, s. 22.

Case of person sentenced to death.

When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Act X, 1872, s. 464, para. 3.

Judgment when to be translated.

372. The original judgment shall be filed with the record of proceedings, and where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

Act X, 1872, s. 302, para. 1.

Court of Session to send copy of finding and sentence to District Magistrate.

373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

CHAPTER XXVII.

Of the Submission of Sentences for Confirmation.

Act X, 1872, s. 287, para. 1.

Sentence of death to be submitted by Court of Session.

374. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

Act X, 1872, s. 289.

Power to direct further inquiry to be made or additional evidence to be taken.

375. If when such proceedings are submitted the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself or direct it to be made or taken by the Court of Session.

Such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assessors, and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

The result of such inquiry and the evidence when it is not made or taken by the High Court shall be certified to such Court.

Act X, 1872, s. 289.

Power of High Court to confirm sentence or annul conviction.

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

(*a*) may confirm the sentence, or pass any other sentence warranted by law, or

(*b*) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(*c*) may acquit the accused person;

Submission of Sentences for Confirmation.

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

Act X, 1872, s. 290.

377. In every case so submitted, the confirmation of the sentence or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed, and signed by at least two of them.

Confirmation or new sentence to be signed by two Judges.

Act X, 1872, s. 271 B. Act XI, 1874, s. 22.)

378. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in case of difference of opinion.

Act X, 1872, s. 301, para. 1.

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

Procedure in cases submitted to High Court for confirmation.

Act X, 1872, ss. 18, 36. Act XI, 1874, s. 3.

380. When a sentence passed by an Assistant Sessions Judge or by a District Magistrate acting under section 34 is submitted to a Sessions Judge for confirmation, such Sessions Judge—

Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34.

I. L. R., 4 Bom., 239.

(*a*) may confirm the sentence, or pass any other sentence which the lower Court might have passed; or

(*b*) may annul the conviction, and convict the accused of any offence of which the lower Court might have convicted him, or order a new trial on the same or an amended charge; or

(*c*) may acquit the accused; or

(*d*) if he thinks further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

Unless the Sessions Court otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or evidence taken; and when the sentence has been submitted by an Assistant Sessions Judge, such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors.

The result of such evidence shall be certified to the Sessions Court.

Execution.

CHAPTER XXVIII.

OF EXECUTION.

Act X, 1872, s. 301, para. 2.

381. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

Execution of order passed under section 376.

Act X, 1872, s. 309. Act X, 1875, s. 114, adding "to transportation for life."

382. If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence to transportation for life.

Postponement of capital sentence on pregnant woman.

Act X, 1872, s. 302 (cl. 1) (Act XI, 1874, s. 22.) Act IV, 1877, s. 183.

383. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is to be confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

Execution of sentences of transportation or imprisonment in other cases.

Act X, 1872, s. 303. Act X, 1875, ss. 103, 104. Act IV, 1877, s. 184.

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Direction of warrant for execution.

Act X, 1872, s. 304. Act X, 1875, s. 104.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant with whom to be lodged.

Act X, 1872, s. 307, para. 1. Act X, 1875, s. 105. Act IV, 1877, s. 185.

386. Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

Warrant for levy of fine.

Act X, 1872, s. 307, para. 2. Act X, 1875, s. 105. Act IV, 1877, s. 185.

387. Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

Effect of warrant.

Act IV, 1877, s. 185.

388. When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment and may release the offender

Suspension of execution of sentence of imprisonment.

on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond; and in the event of the fine not having been realized the Court may direct the sentence of imprisonment to be carried into execution at once.

Act X, 1872, s. 307, last para. Act IV, 1877, s. 185, last sentence.

389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence or by his successor in office.

Who may issue warrant.

Act X, 1872, s. 302A, cl. 2. (Act XI, 1874, s. 32.) Act IV, 1877, s. 183.

390. Where the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Execution of sentence of whipping only.

Act X, 1872, s. 310. Act IV, 1877, s. 187.

391. When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal be made within that time, until the sentence is confirmed by the appellate Court: but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the appellate Court confirming the sentence.

Execution of sentence of whipping, in addition to imprisonment.

Act X, 1872, s. 311, para. 3. Act XI, 1874, s. 33, para. 1.

The whipping shall be inflicted in the presence of the officer in charge of the jail: unless the Judge or Magistrate orders it to be inflicted in his own presence.

Act X, 1872, s. 311, para. 1. Act X, 1875, s. 108. Act IV, 1877, s. 188.

392. In the case of a person of or over sixteen years of age, whipping shall be inflicted with a light ratan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs; and in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light ratan.

Mode of inflicting punishment.

Act X, 1872, s. 311, para. 2. See précis, paras. 249—251.

In no case shall such punishment exceed thirty stripes.

Limit of number of stripes.

Act X, 1872, s. 312, para. 3. Act IV, 1877, s. 190.

393. No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping: namely,—

Not to be executed by instalments. Exemptions.

(*a*) females;

(*b*) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years;

(*c*) males whom the Court considers to be more than forty-five years of age.

Act X, 1872, s. 312, paras. 1 and 2. Act XI, 1874, s. 33, para. 2. Act X, 1875, s. 108. Act IV, 1877, s. 189.

394. The punishment of whipping shall not be inflicted unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Whipping not to be inflicted if offender not in fit state of health.

If, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Stay of execution.

Act X, 1872, s. 313. Act X, 1875, s. 108. Act IV, 1877, s. 191.

395. In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Procedure if punishment cannot be inflicted under the last section.

Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

Act X, 1872, s. 316. Act X, 1875, s. 110. Act IV, 1877, s. 192.

396. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say:—

Execution of sentence on escaped convicts.

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

Explanation.—For the purpose of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Act X, 1872, s. 317. Act X, 1875, s. 111. Act IV, 1877, s. 193.

397. When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced:

Sentence on offender already sentenced for another offence.

Suspensions, Remissions and Commutations of Sentences.

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

Act X, 1872, s. 317, proviso.

398. Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

Saving as to sections 396 and 397.

Act X, 1872, s. 318. Act X, 1875, s. 112.

399. When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

Confinement of youthful offenders in reformatories.

All persons confined under this section shall be subject to the rules so prescribed.

Act X, 1879, s. 305.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

Return of warrant on execution of sentence.

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES.

Act X, 1872, s. 332, para. 1.

401. When any person has been sentenced to punishment for an offence, the Governor General in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

Power to suspend or remit sentences.

Act XI, 1874, s. 34, cl. 1.

New.

Whenever an application is made to the Governor General in Council or the Local Government for the suspension or remission of a sentence, the Governor General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

Previous Acquittals or Convictions.

If the person in whose favour a sentence has been suspended or remitted fails to fulfil the conditions prescribed by the Governor General in Council or the Local Government, the Governor General in Council or the Local Government, as the case may be, may cancel such suspension or remission, whereupon such person may, if at large, be arrested by any Police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

Act X, 1872, s. 322, para. 2.

Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites, or remissions of punishment.

Act XI, 1874, s. 34, cl. 2.

402. The Governor General in Council, or the Local Government, may without the consent of the person sentenced commute any one of the following sentences for any other mentioned after it:—

Power to commute punishment.

Act X, 1872, s. 322, para. 3.

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

Act X, 1872, s. 460. Act X, 1875, s. 117. Act IV, 1877, s. 113.

403. A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

Person once convicted or acquitted not to be tried for same offence.

Cf. N. Y. Code of Crim. Proc., s. 13. Form of plea under this section, N.-W. P., 1875, p. 373.

A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, paragraph one.

A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Act X, 1872, ss. 147, para. 2, 195, Expln, 216, Expl. 2. Act X, 1875, s. 14.

EXPLANATION.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

Illustrations.

(*a*) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(*b*) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c*) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(*d*) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(*e*) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph three of this section.

(*f*) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(*g*) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

PART VII.

OF APPEAL, REFERENCE AND REVISION.

CHAPTER XXXI.

OF APPEALS.

Act X, 1872, ss. 282, para. 2, 286, omitting the Illustrations. Act IV, 1877, s. 180.

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Unless otherwise provided, no appeal to lie.

405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court, may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order rejecting application for restoration of attached property.

Act X, 1872, s. 287.

406. Any person required by a Magistrate, other than the District Magistrate or a Presidency Magistrate to give security for good behaviour under section 118, may appeal to the District Magistrate.

Appeal from order requiring security for good behaviour.

Act X, 1872, s. 266, omitting "or to a Magistrate of first class empowered."

407. Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349, by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

Appeal from sentence of Magistrate of the second or third class.

Act X, 1872, s. 47, para. 2.

The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals shall be presented to such Subordinate Magistrate, or if already presented to the District Magistrate shall be transferred to such Subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

Transfer of appeals to first class Magistrate.

Act X, 1872, ss. 269, para. 1, 270, para. 2.

408. Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session:

Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.

Act X, 1872, s. 270, para. 1 and 3.

Provided as follows:—

(*a*) when in any case an Assistant Sessions Judge or a District Magistrate passes any sentence which is subject to the confirmation of the Sessions Court, every appeal in such case shall lie to the High Court, but shall not be presented until the case has been disposed of by the Sessions Court:

Act X, 1872, s. 79.

(*b*) any European British subject so convicted may at his option appeal either to the High Court or the Court of Session.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional or Joint Sessions Judge.

Appeals to Court of Session how heard.

Act X, 1872, ss. 30, 270, para. 3, 271. Act XI, 1874, s. 22, cl. 1.

410. Any person convicted on a trial held by a Sessions Judge, or Additional or Joint Sessions Judge, may appeal to the High Court.

Appeal from sentence of Sessions Court.

Act IV, 1877, s. 167.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

Appeal from sentence of Presidency Magistrate.

Act X, 1872, s. 273, last para. Act IV, 1877, s. 167.

412. Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a Court of Session or a Presidency Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in certain cases when accused pleads guilty.

Act X, 1872, s. 273, para 1.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

No appeal in petty cases.

Act X, 1872, s. 273, para 2.

EXPLANATION.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has been passed.

Act X, 1872, s. 274, para. 1.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

No appeal from certain summary convictions.

Act X, 1872, s. 274, para. 2.

415. An appeal may be brought against any sentence referred to in section 413 or 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

Proviso to sections 413 and 414.

Act XI, 1874, s. 24.

EXPLANATION.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Act X, 1872, s. 274, para. 3.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed under Chapter XXXIII on European British subjects.

Saving of sentences on European British subjects.

Act X, 1872, s. 272, paras. 1 and 2. Act IV, 1877, s. 168, para. 1.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

Appeal on behalf of Government in case of acquittal.

Act X, 1872, s. 271, last para. Act XI, 1874, s. 22. Compare Act X, 1877, s. 541.

418. An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

Appeal on what matters admissible.

EXPLANATION.—The alleged severity of a sentence shall for the purposes of this section be deemed to be a matter of law.

Act X, 1872, s. 275. Act IV, 1877, s. 169.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and in cases tried by a jury a copy of the heads of the charge recorded under section 367.

Petition of appeal.

Act X, 1872, s. 277. Act IV, 1877, s. 171.

420. If the appellant is in jail, he may present his petition of appeal, and the copies accompanying the same, to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Procedure when appellant in jail.

Act X, 1872, s. 278, paras. 1 and 2. Act IV, 1877, s. 172, omitting last sentence. I. L. R. 4 Bom. 101.

421. On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and if it considers that there is no sufficient ground for interfering, it may reject the appeal summarily: Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

Summary rejection of appeal.

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

422. If the Appellate Court does not reject the appeal summarily, it shall cause notice to be given to the appellant or his pleader and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

Act X, 1872, ss. 62, 209, para. 2, 279. Act IV, 1877, s. 173.

Notice of appeal.

and in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

Act XI, 1874, s. 27.

423. The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal or may—

Act X, 1872, ss. 272, para. 3, 280. Act IV, 1877, ss. 174, 176.

Powers of Appellate Court in disposing of appeal.

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(*b*) in an appeal from a conviction (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (3) with or without such reduction, and with or without altering the finding, alter the nature of the sentence, but not so as to enhance the same;

Act X, 1872, s. 284.

(*c*) in an appeal from any other order, alter or reverse such order:

(*d*) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

Act X, 1872, s. 271, extended to appeals by the Crown. Act X, 1872, s. 299, para. 3.

424. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court:

Judgments of subordinate Appellate Courts.

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

425. Whenever a case is decided on appeal by the High Court under this chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the

Act X, 1872, s. 299, paras. 1 and 2.

Order on appeal to be certified to lower Court.